of this letter. I just wanted to make sure that that appears in the record. Once Mr. Jaureguy has listed this document among the other documents he is putting in and has stated their purpose, then in argument later I will specifically object to this letter.

The Court: Before we adjourn, I was wondering how many more upstate doctors you expected to call. You have pretty well covered it.

Mr. Jaureguy: Oh, I would say maybe a dozen. Of course, I could give you a lot better information in a minute.

1980 The Court: All right. You could not cut down some of your earlier estimates, could you? You do not need to feel bound by your pre-trial plan. Let me show you how many counties you have covered, just from memory. You have covered Clatsop. I think you had one man here from Columbia, didn't you?

Mr. Jaureguy: Yes, he will be here.

The Court: I am talking about what you have done already.

Mr. Jaureguy: I don't think we have had any from Columbia.

The Court: Did you have a man from Tillamook?

Mr. Jaureguy: No, we haven't had anybody from Tillamook. I don't think we will have anybody from Tillamook.

The Court: You have had Yamhill County?

Mr. Jaureguy: Yes.

The Court: You have had Washington?

Mr. Jaureguy: Yes.

The Court: You have had Polk?

Mr. Jaureguy: Yes.

The Court: And Coos and Curry?

Mr. Jaureguy: Coos, and also had testimony as to Curry County.

The Court: Take them together.

Mr. Jaureguy: Marion.

The Court: That takes care of the Coast country over here, everything west of here.

Mr. Jaureguy: I wish I could be sure that it takes
1981 care of it. It has been a problem in my mind. I think your Honor could appreciate it, it has been a problem as to how many doctors we had to call to testify to the same thing, and it has been practically repetition of each other, except the testimony of each one as related to himself.

The Court: Now, in Southern Oregon you have had Josephine, you have had Jackson County, you have had Douglas, and you have had Lane.

Mr. Jaureguy: Not yet.

The Court: Nobody from Lane?

Mr. Jaureguy: Not yet.

The Court: And from the other side you have had Klamath and you have had Deschutes.

Mr. Jaureguy: And Wasco.

The Court: You had Wasco and Hood River. I should think three or four more would be about all, wouldn't it? I mean, it is beginning to get cumulative, isn't it?

Mr. Jaureguy: Yes, that is right.

The Court: I am not pre-judging the case, but one in my position is always privileged to guess when this situation becomes cumulative.

Mr. Jaureguy: Yes. I hope that your Honor will realize what I had in mind when I say if your Honor is going to say anything on the subject I hope it will be something more than a suggestion, for the purpose of the record.

1982 The Court: I had not included Clackamas and Marion, I don't think. I don't think you have had anybody from Linn County.

Mr. Jaureguy: Well, that is pretty well covered, I guess. We have, however, as you will notice from Dr. Hemingway's testimony, a little different line of testimony, repeating some that has been already put in, but nevertheless I think there is a difference.

The Court: Maybe Mr. Marcus wants to participate in this. He is certainly welcome to. The charge is that there is a statewide conspiracy, is that right?

Mr. Marcus: The charge is, your Honor, that these particular defendants have conspired, and also certain other county medical societies which have not been named?

The Court: All right. Answer as best you can. You have covered as to particular areas. Do you think you have to do more than cover what they have introduced?

Mr. Jaureguy: You are asking me or Mr. Marcus?

The Court: Whoever wants to answer.

Mr. Jaureguy: I would say no, we are not called upon to do more than that. However, when it comes to the defendants named from the Eastern part of the state, of course, we will have to introduce some evidence.

The Court: I know. I expect you to call all the defendants. I would expect you to do that.

1983 Mr. Jaureguy: I even had some doubt whether we would or not. While on the subject—

The Court: I should think every defendant would want to be heard. I would.

Mr. Jaureguy: Yes, they do. A man who is not a defendant, but whom we had intended calling, is Dr. Sears of Portland. He is in California, and we have a letter from his wife telling us that his condition is not good, and she told us not to tell the doctor, but I can tell your Honor—she requested us, if possible, not to call him. I wonder if the record could merely show, and if counsel will agree with my statement without proof, that he is sick in California.

Mr. Marcus: I will not agree to anything about Dr. Sears, because Dr. Sears is one person who would have to be cross examined extensively. I am willing to agree that there is no prejudice in your not calling Dr. Sears.

Mr. Jaureguy: That is as much as I asked for.

The Court: I would like you to do this, Mr. Jaureguy: Have the defendants in here and begin to put them on. Let's get them on.

Mr. Jaureguy: There is another Dr. Sears who was called by the Government and whose testimony with regard to why he did not take tickets was, in a general way, similar to the testimony of the doctors we have produced, and if Counsel is willing to stipulate that the testimony of other witnesses that I would call would be cumu-

1984 lative in the sense that they had the same general objection to taking tickets that the witnesses we have brought on have, that would simplify it.

Mr. Marcus: I can't agree to that.

The Court: I would like you to begin putting on the defendants right away, and I would like to hear all of them, and then we will hear other witnesses as far as it can be arranged.

Mr. Jaureguy: You mean in point of time?

The Court: Tomorrow or the day after.

Mr. Jaureguy: I don't know how well we can arrange it, but we could try.

The Court: As Kolb and Dill used to say, "Begin to commence."

(Thereupon, at 4:00 o'clock P.M., an adjournment was taken until 10:00 o'clock the following day, February 1, 1950.)

1985 Court reconvened at 10:00 o'clock A.M., Wednesday, February 1, 1950.

Wednesday, February 1, 1950.

Mr. Jaureguy: Shall I proceed with the next witness?
The Court: Yes.
Mr. Jaureguy: Call Dr. Martzloff.

DR. KARL H. MARTZLOFF, one of the Defendants herein, was thereupon produced as a witness on behalf of defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. You are Karl H. Martzloff? A. Yes.
Q. Where do you live? A. My city address? Portland, Oregon.
Q. How long have you been in Portland? A. I have been in the practice of medicine in Portland since 1924.
Q. Your profession is that of physician and surgeon? A. Yes, sir.
Q. Where did you get your medical training? A. Johns-Hopkins Medical School.
Q. Then did you have any postgraduate training

1986 or internship? A. Yes. I graduated in 1917 and had postgraduate hospital training from 1917 to 1924.

Q. You have been practicing in Portland ever since? A. Yes, sir.
Q. Is your practice a general practice or do you specialize? A. It has all been specialized.
Q. In what specialty? A. Surgery.
Q. Do you belong to any medical societies? A. Yes.
Q. Will you tell us what they are? A. I belong to the American Medical Association, the North Pacific Surgical Society, the American Gynecology Society, American College of Surgeons and a member of local medical societies that are specialists' societies.
Q. Do you belong to the Multnomah County Medical Society? A. Yes.
Q. And the Oregon State Medical Society? A. Yes.
Q. With respect to the Multnomah County Medical Society and the State Medical Society and the American

Medical Association, how long have you been a member of those societies? A. I believe probably since 1924.

Q. Has that been continuous? A. Yes, sir.

1987 Q. Have you ever been an officer of any of those societies? A. I have been an officer of the Multnomah County Medical Society and the Oregon State Medical Society.

Q. What offices have you held in those societies? A. I couldn't mention—I have been Vice-President and a President and Treasurer of Oregon State Medical Society, and I have been Vice-President—I don't know whether you would call being a member of the Council as an officer.

Q. Well, we would like to know that anyway. A. I have been a member of the Council of the Oregon State Medical Society and of the Multnomah County Medical Society. I think that covers the principal ones.

Q. Were you ever a member of a committee of either the Council of the Multnomah County Medical Society or of the Society to investigate or for setting up medical care for low-income persons and particularly with respect to an organization known as the Multnomah Industrial Health Association? A. Yes, sir.

Q. When was that? A. I think—That was sometime in 1935, as I recall, 1935 or 1936.

Q. Were you chairman of that committee? A. Yes, sir.

Q. That committee had what you might call an executive secretary or somebody who conducted surveys. Do

1988 you recall that? A. Yes.

Q. That was who? A. Mr. Ralph Couch, Mr. Couch at that time being, I presume you would term it, Executive Secretary of the University of Oregon Medical School and a certified accountant as I remember by training.

Q. Is Mr. Couch living now? A. No, Mr. Couch is dead.

Q. Were your reports and recommendations submitted to some group? A. Yes, sir, on the basis of Mr. Couch's separate studies which the whole committee studied as separate documents in turn as they came in, the committee finally prepared a report which was then submitted to the Council of the Multnomah County Medical Society.

Q. Do you know what the Council did with it, if anything? A. I suppose I should know, but I do not recall clearly. I presume the report was submitted and the report was accepted.

Q. I am not going to go into all of the report, but I notice among one of the recommendations made is the recom-

mendation that hospitals be requested not to retain on their staffs any doctors not members of the Medical Society. Do you recall that recommendation? A. I recall it because I read the report since this trial was commenced. Otherwise I would not remember it.

1989 Q. Was there anything ever done to carry out that recommendation, as far as you know? A. Not to my knowledge; no, sir; neither by the Multnomah County Medical Society nor by the various hospitals in town.

Q. Was there anything done by you personally to try to carry it out? A. No, sir.

Q. Have you ever requested any hospital not to retain on its staff a doctor because he was not a member of the Medical Society? A. No, sirree. In fact, having occupied somewhat of an official capacity with hospital work for many years, that has never been even discussed with the hospital administrator.

Mr. Marcus: That is, as far as you know; isn't that so, Doctor?

A. I am speaking for myself personally.

Mr. Jaureguy:

Q. Which hospital is that? A. Good Samaritan Hospital.

Q. Were you ever a member of the Grievance Committee of the Multnomah County Medical Society? A. Yes.

Q. Were you ever a member of the Board of Censors? A. Yes, I believe I was, after having been a member of the Grievance Committee.

Q. Can you recall about when that was? A. I would guess—not very accurate—I would state possibly

1990 maybe 1938; possibly.

Q. Was that the last of it or the first of it? A. I can't tell you that.

Q. Would you say that you were on the Grievance Committee in 1936? A. That is possible.

Q. Would you say you were on the Grievance Committee when there were some hearings involving Dr. Sabin? A. Yes, sir.

Q. Could you tell us about how long your membership on the Grievance Committee, with your membership on the Board of Censors, continued? A. Oh, I would guess possibly two to three years.

Q. Since that time have you ever had any connection

with the Grievance Committee work or the Board of Censors work? A. None whatsoever.

Q. Or engaged in any activity involving the discipline of members of the Society or endeavoring to expel them, suspend them, or anything of the kind? A. None whatsoever; no, sir.

Q. While you were on the Grievance Committee and on the Board of Censors, do you recall that some of the doctors, members of the Society, were brought before the Board of Censors and investigated by the Grievance Committee? A. Yes, sir.

1991 Q. And that with respect to some of those doctors recommendations were made that they be expelled from the Society? A. The recommendations, as I recall, were made that they be expelled if they did not desire to correct what we considered their unethical practices, or if they did not desire to withdraw voluntarily, because these men, when these recommendations were made, were in violation of the Constitution and Bylaws of the Multnomah County Medical Society.

Q. Can you tell us generally what those unethical practices were? A. Basically, before any action could be taken against a physician—after all, these men were all doctors and members of our profession. Before any action could be taken we had to have essentially incontrovertible proof that they were in violation of the Constitution and Bylaws of the Multnomah County Medical Society, and it had to be shown that they were involved either directly or indirectly in the solicitation or advertising or, in many instances, were working for a third party and to that degree were dividing their fees with a third party who himself was not a physician necessarily and who was not necessarily engaged in the practice of medicine.

Q. Did you ever participate in any proceedings to expel any doctor merely by reason of the fact that that doctor had accepted tickets of a hospital association or sent his bills to a hospital association, or accepted hospital

1992 association checks? A. Not to my knowledge. We know that a good many men accepted hospital association checks, and that by so doing the hospital association, very often without the doctor's permission, would publish that doctor's name on the list of their staff physicians without that doctor's knowledge or consent. But merely for the acceptance of a ticket or for taking care of patients insured by a hospital association, we did not consider that sufficient evidence to go on.

Q. Did you regard those disciplinary proceedings an attempt to destroy all the hospital associations? A. These really were not disciplinary proceedings, as a matter of fact. First of all, the purpose of creating the Grievance Committee was to have a committee to which physicians could bring their complaints or submit whatever evidence they had, and if that complaint or if that evidence appeared to be bona fide and of a sufficiently aggravating character the committee would then feel justified in proceeding with a study of the facts in so far as they could be determined. If the committee felt the information warranted it, the committee would then submit this information to the Board of Censors.

The whole purpose of this proceeding, these proceedings, was, first of all, to bring the individuals who were involved before the committee and before the Board of Censors with the idea, first of all, of discussing their own special individual problems, because these men all, as a group,
1993 had special problems which brought them into the field for consultation with the committee, and it was our purpose to give them a chance to discuss these things with us, in order to explain their situation and in order to educate the Grievance Committee and the Board of Censors on their special problems and determine then if something could not be worked out that was satisfactory to the individual concerned.

These were, basically, friendly discussions. I mean, it sounds like a rather grim legal proceeding, which, of course, it was not, the idea being always to maintain friendly and amicable relations with all of the men who came before the committee.

Q. You spoke of the provisions of the constitution and bylaws of the medical society which your group felt were being violated. Were those provisions in the constitution and bylaws at the time these particular doctors became members? A. Yes; as I recall, they were. These were provisions that were distinctly outlined in the constitution and bylaws, to which these men subscribed before they joined the medical society.

Q. I want to go back to a question that I don't think has been fully answered, and that is whether any of these proceedings were for the purpose of attempting to destroy any commercial hospital association? A. Oh, the commercial hospital associations were purely coincidental factors. The reason that there was evidence avail-
1994 able to show that these men were engaged in solicitation, advertising and brokering their services

through a third party was due to the fact that they happened to be working for hospital associations, and the material had been given wide publicity and, therefore, was available as a matter of evidence.

Q. The proceedings that your committee carried on, whether it was of the nature you have been telling us about, having discussions, or whether they were proceedings before the Board of Censors, did you regard those as punitive in nature? A. No, sir, they were not designed to be punitive. We were not interested, first of all, in expelling anyone from the Society. We were interested in having these individuals recognize that they were in violation of the Constitution and Bylaws of the Society and our primary function was to try to get these men to cease the violations and thereby remain members in good standing of the Multnomah County Medical Society.

Q. In case they chose to continue in violation of the provisions of the constitution and bylaws— A. In case they chose to continue in violation of the provisions of the constitution and bylaws, as some of them did, they were told if that were the case that they would have to be recommended for suspension or—but generally it was our procedure to permit these men to withdraw voluntarily in order to save them the embarrassment of expelling them.

Q. I understand, then, when you came to that
1995 point, it was just a case that they could stay in the Society if they followed the rules of the constitution and bylaws and, if they did not, then they would cease being members of the Society? A. Very definitely. We felt that their joining the Society was a voluntary act upon their part, to begin with, and membership in the Society was not necessary in order for them to continue to conduct the practice of medicine and making a living. In other words, asking them to withdraw or expelling them from the Society in no way interfered with these individuals in pursuing their normal professional pursuits.

Q. Upon any of them withdrawing from the Society or being suspended, did your committee or any other group that you know about ever try further to in any way hinder them in the practice of medicine in the way that they wanted to? A. No. That was the end of it.

Q. That was the end of it? A. Yes.

Q. You said, I think, that you were a member of the Grievance Committee, either of the Grievance Committee or Board of Censors for about three years.

The Court: Do you expect to put in the case sometime the similarity or difference between the Bar Association and Medical Association? But, evidently, I see the answer to my question. They do not have in medicine what we have in law. They do not have, like we do, a Bar Association that suspends them from practice?

1996 Mr. Jaureguy: No.

Mr. Marcus: That is what happened here.

Mr. Jaureguy: I think I will answer the question without that type of argument which Mr. Marcus seems to want to inject into it. The Board of Medical Examiners—well, I will ask the doctor.

Q. Is the Board of Medical Examiners the board of any medical society? A. It is not.

Q. It is appointed by whom? A. By the Governor.

Mr. Jaureguy: I can say this, from the statute, your Honor, that it is directly a governmental body and that the Medical Society, of course, different from the Bar Association, is not a governmental body.

The Court: Do you want to make a statement at this place in the record?

Mr. Marcus: Well, your Honor, if we are talking about having one's license taken away, that is one thing. If we are talking about being thrown out of the Medical Society or the Bar Association, we claim that we are in the same position. As a matter of fact, I rather doubt that in every state of the Union the Bar Association is recognized by the state as a state enforcing agency, so that when that Bar Association takes steps that oust a man from the

1997 Bar Association, I assume we are in the same position as in this case.

Mr. Jaureguy: I am only speaking of Oregon.

The Court: There is this difference between the Board of Medical Examiners and the Board of Bar Examiners. The Board of Medical Examiners is a body that takes away licenses.

Mr. Jaureguy: They both grant and take away, both.

The Court: That is different from ours.

Mr. Jaureguy: We have two different groups. In fact, the Board of Bar Examiners, as your Honor knows, is appointed by the Supreme Court.

The Court: It is not disciplinary.

Mr. Jaureguy: Disciplinary proceedings and expulsions from the Bar Association are initiated by groups that are appointed by the Supreme Court. They make their recom-

mendations to the Supreme Court, but they are appointed. They are a part of the jurisdiction of the Board of Governors elected by the members of the Bar.

The Court: Licenses to practice law ultimately are taken away by the Supreme Court.

Mr. Jaureguy: That is correct.

The Court: On recommendation of the lawyers' group?

Mr. Jaureguy: Well, they are initiated by recommendations, but it may not be on a recommendation. The Supreme Court sometimes kicks them out when the Bar rec-
1998 ommends something else.

The Court: I understand that.

Mr. Jaureguy: Let me ask this question:

Q. Were there any recommendations to the Board of Medical Examiners that any of these activities that were before the Grievance Committee or the Board of Censors that you have been describing be used as a basis of depriving a doctor of his license? A. To my knowledge it was never even contemplated or thought of.

Q. The only thing that you regard as your function, if they wanted to abide by the rules that were there when they went in they could stay in; if they did not, they could not be members of the Society? A. That is all, absolutely. First of all, we didn't want to do anything to in any way injure an individual just because he happened to be involved in unethical practices in violation of the constitution and bylaws. We insisted that if a man wanted to be in violation of the constitution and bylaws he should either correct his conduct or drop out; if he did not want to drop out voluntarily, then he should be expelled. We would much prefer to have an individual give up his violation of the constitution and bylaws; we would much prefer to have him do that than to have to proceed in a disciplinary manner.

The Court: Tell me again—you have stated this all be-
fore, but tell me again: What percentage of the
1999 licensed doctors in the state are not members of the Oregon State Medical Society?

Mr. Jaureguy: I think the last figures we have in the record, about 30 per cent.

The Court: Not members?

Mr. Jaureguy: Yes. About 70 per cent are, and I think we have the figures for various years. In 1936 the percentage of those who were not members was larger than in 1938, which is the latest figure.

Q. If you were on three years, that would take you to about 1938. The evidence in this case indicates that the last of these proceedings that you have described was in 1940 and there have not been any since. Do you know the reason for that? A. Yes.

Mr. Marcus: Your Honor, I object to his answering any question like that. How could he know? It would have to be a conclusion.

Mr. Jaureguy:

Q. The question calls for an answer Yes or No.

The Court: Go ahead. Answer the question.

A. Yes, I know where the actions were dropped, although at that time I was no longer an active member of the Board of Censors.

Mr. Jaureguy:

Q. Would you explain the reasons, then. A. I think the reasons were, primarily, two: One, the fact that the individuals who were the principal or the most gross violators of the constitution and bylaws had either dropped out of the Society voluntarily or had been expelled; and the other one was—and this was a very important consideration—that about that time the Government was prosecuting the Medical Society of the District of Columbia, and in discussing this with some of the members of the Board of Censors and the Grievance Committee, who were all friends of mine, I was told that the reason that the action had largely ceased was because the Society thought it might be in violation of the law if it continued as it had prior to that time.

2000

Q. Since you were on the Grievance Committee and the Board of Censors, Doctor, have you ever endeavored to have any doctor suspended or expelled from the Medical Society? A. No, sir.

Q. Did you have anything to do with the organization of OPS? A. Nothing whatsoever, as far as I can recall, except that at the time the OPS was formed I believe I was President of the State Medical Society.

Q. You seem to contradict one of our other witnesses, Dr. Baum, when he was testifying, that he was president at that time. A. Well, he may have been. I would not offer that as a fact, but certainly OPS was under serious discussion during the time I was President of the State Society. It may not have been formed.

Q. The Articles of Incorporation were filed in December, 1941. A. I believe I was president from 1940 to
2001 1941, if I am not mistaken.

Q. So that your term expired shortly before December, 1941? A. Yes, sir.

Q. Can you tell us what was the purpose of organizing the OPS? A. As I recall, the primary purpose for organizing the OPS were twofold—

Mr. Marcus: He just testified, your Honor, he was not an officer of the Society at the time OPS was formed. How could he know what the purpose was?

The Court: I will tell you, Mr. Martzloff,—

A. Pardon me, sir?

The Court: Or Mr. Marcus, rather. Your names sound familiar sometimes. I was supposed to retire from all political interests when I was appointed a Judge in 1937. If someone were to ask me what has been going on in the Democratic party since that time, I think I would be a competent witness because I read the newspapers and I hear a lot of things. That is the general nature of this type of testimony.

Mr. Marcus: If we understand that is the basis for this doctor's opinion,—

Mr. Jaureguy: No, you don't understand that is the sole basis because the evidence shows in this case the plans for the organization of OPS had been going on for two or three years, during a portion of which time this doctor was president.

The Court: Go ahead.

2002 A. I was also an officer of the State Society at that time, being on the Council of the State Society, and therefore was in full possession of the facts as they existed.

Mr. Jaureguy:

Q. All right. Now, to go back to the question: What was the reason for this organization? A. As I recall, they were primarily twofold. There were at that time a number of local voluntary prepaid health plans in the State of Oregon that were being operated by physicians. There were other parts of the state that had no such prepaid health plans where it was felt that they were desirable and would serve the public welfare.

OPS was, I think, organized for the purpose of co-ordinating the efforts of the various county societies with all

of these prepaid medical care plans so that when an individual, for example, belonged to a prepaid medical care plan in Medford, Oregon, and then should come to Portland and become ill, it would be possible, through OPS, for that individual to have his care under his local plan and still receive his care in Portland.

The other purpose was to provide other areas in the state with prepaid medical care plans where the local profession had at the time not provided such plans, and where the local profession did not object to the OPS providing that type of care.

Q. I believe the report of your committee in October, 1935, sets forth some views that the Medical Society owed an obligation to the public to have some type of pre-
2003 paid medical care plan for low-income groups. Do you recall that? A. Yes, we felt that way for many years, and there have been many, many experiments to try to work out some such scheme.

Q. Are you one of the cooperating physicians of OPS? A. I do not belong to OPS.

Q. Have you ever? A. Not to my knowledge.

Q. Have you ever taken tickets of—you know what the expression "taking tickets" means? A. Yes, sir.

Q. Have you ever taken tickets of commercial hospital associations? A. Not to my knowledge.

Q. Why not? A. For the simple reason that I did not study medicine for the purpose of having some third party broker my services without my knowledge and without my consent.

Q. Do you accept checks from them? A. I do not.

Q. Why not? A. Because the checks that they send are an element of subterfuge, with the idea of getting a doctor's endorsement on a check and then to use that for publicity purposes to show that you are one of their employes or cooperating doctors.

Q. And if a patient comes to your office, a patient
2004 who you know is a member of a commercial hospital association, do you take care of the patient? A. Definitely.

Q. Do you do anything to aid him, to aid the patient in getting reimbursement from the hospital association? A. When these people tell me that they are covered by one of the hospital associations, I tell them that I do not accept payment from hospital associations but that I am very glad to give them care and then, if, after they have received their care, they—after they have received their care

they will be rendered a bill directly, and the bill will not be sent to the hospital association but that we will give them a copy of the record, an itemized statement, which they may submit to their hospital association if they so desire, which will give the hospital association the information that they may feel necessary in order to act upon their claim.

Q. Do you follow the same procedure if they are protected by other insurance companies? A. Yes, whether protected by the OPS or any commercial insurance carrier.

The Court: Does the Blue Cross operate on a ticket basis as to its medical contracts? Does anybody know?

A. I know. Yes, sir.

The Court: What do they do? How do they operate?

A. They do not have a ticket, your Honor. A pa-
2005 tient will come to a physician, whether they are members of the OPS or the Blue Cross or of the National Hospital Association or the Industrial, and they merely tell you that they have Blue Cross coverage. We just accept that.

The Court: Does the OPS have tickets?

A. No, sir.

The Court: The OPS and the Blue Cross operate in the same way, then, in that respect, as to that?

A. Possibly. As a matter of fact, I never have seen a ticket in recent years. I may have seen a ticket in times gone by, but in recent years I have never seen a ticket from anybody or for anybody who was covered by a commercial hospital association. They merely tell me that they are members and I accept that at face value.

Mr. Jaureguy:

Q. You accept it at face value? A. It is no guarantee of payment to me.

Q. What I mean is that it does not affect you one way or the other, as I understand your testimony, as to whether you take care of a patient or anything else? A. No, a patient is a patient.

Q. I want to go on, very briefly, to another little matter that has been injected into the case, and that is whether in 1936 or thereabouts you organized or became a member of a clique to try to govern the affairs of the Multnomah

County Medical Society? The doctors who have been named as members of the clique are Dr. Sears of Portland,
2006 Dr. Gambee, Dr. Fitzgibbon—

The Court: Brooke.

Mr. Jaureguy:

Q. —Dr. Banner Brooke; and a doctor that was not a member of the clique, according to the testimony, but was present when it was organized is Dr. Chester Moore.

Do you remember any such clique who did any organizing? A. That is all news to me.

Q. You mean it was news when you read the newspapers? A. Well, of course I had to read the newspapers when I was informed of this suit. I was notified of my involvement, of course, about ten days or two weeks after the Attorney-General gave his customary political blast of the medical profession.

Q. That is the first you knew of it? A. That is right.

Mr. Marcus: I am not even moving to strike that out.

The Court: Oh, no. I expect you and he will be a half-hour in exchanging your views on that theme.

Mr. Jaureguy:

Q. Up to that time did you have any intimation by any governmental official or otherwise that you had been engaged in a conspiracy since January 1st, 1936? A. It was all news to me, of course. It sounds like an absurdity.

Q. This clique, does that sound like an absurdity, too? A. It certainly does.

Q. These men that I have named, including yourself, were they successively Presidents of the Multnomah
2007 County Medical Society?

The Court: Well, you know what the fact is.

A. No, sir, they weren't.

The Court: You know what the fact is, whether they were or were not.

Mr. Jaureguy: Yes, I know.

The Court: We have it in the record now.

Mr. Marcus: It is already in the record.

A. I think only one of those men, Dr. Banner Brooke, was President of the Multnomah County Medical Society.

Mr. Jaureguy:

Q. Have you ever had any official position with the publication known as Northwest Medicine? A. Yes, sir.

Q. What has that been? A. I have been a trustee.

Q. What are the functions of the trustees? A. The trustees of Northwest Medicine ordinarily meet once a year, and their primary function is to look after the operating interests of the journal, primarily from the standpoint of hiring the editorial staff and looking after the fiscal financial affairs of the journal.

Q. Does the Board of Trustees from Oregon, do they appoint somebody in the Medical Society to write what you may call editorials or articles for Northwest Medicine? A. Yes, Northwest Medicine has, for a number of years, had a section in it devoted to news from the various
2008 states that support the journal, Oregon, Washington and Idaho, and each section, as I understand it has its editor—at least from the State of Oregon, the Oregon section has an editor appointed by the trustees from Oregon.

Q. Does the Board of Trustees endeavor to exercise any control over the editor as to what he shall submit to Northwest Medicine? A. To my knowledge the trustees have never exercised any control, any editorial control.

Q. Do they require him to submit his articles to the Board or to anybody else before he submits them for publication? A. They do not.

Q. The articles submitted by this editor, is there any intention that they shall represent the views of any medical society?

Mr. Marcus: Objection, your Honor. That would be a conclusion of the witness.

The Court: He may answer.

Mr. Marcus: The documents speak for themselves.

The Court: He may answer.

A. The editors from various sections are primarily expressing their own views. Those views might possibly at the time express the point of view of the Medical Society in general or might express the views of a small segment of the Medical Society.

Mr. Jaureguy:

Q. Have you received any information from time to time which would justify you in forming an opinion as to whether

those articles or any of them did or did not express
2009 the views of the majority of the doctors? A. Yes. I know that in two ways; first of all, that there have been articles that have appeared there that have not certainly expressed my point of view and articles that I did not consider—articles that I considered to be of questionable propriety under the circumstances under which they appeared. That is my own personal point of view.

Q. Yes. A. And, on other occasions, members of the Oregon trustee group had received complaints from members of the Medical Society complaining about the type of articles that appeared in the Oregon section of Northwest Medicine.

Q. Have members of the Society also approved these articles? A. Very definitely.

Q. About how does the approval line up with the disapproval? A. The disapproval I would say probably comes from a minor segment of the medical profession of the State of Oregon.

Q. As to disapproval, has there been a lot of it? Has there been a lot of objections to the articles? A. Different articles would arouse different reactions. Some articles would arouse approval and other articles would certainly arouse almost violent objections from some members of the profession; yes, sir.

Q. During the time you were an officer of the State Medical Society and on the Council, to what extent did you and other members of the Council feel that
2010 your actions were governed by the American Medical Association, if at all? A. I would say from the standpoint of our conduct as officers of the State Society that we were hardly conscious of the existence of the American Medical Association from the standpoint of making our own decisions.

Q. Did you feel when you made your own decisions you had a right to exercise your own judgment, without regard to what might be said by anyone connected with the American Medical Association? A. Very definitely.

Q. You say you do not take tickets of commercial hospital associations. What was your practice in that regard prior to 1936? A. That has always been my practice.

Q. You have been charged in this complaint with coercing hospitals not to take doctors who were not members of the Medical Society. Have you in any way, either singly or in combination with others, endeavored to coerce hospitals in that respect or at all? A. I have not, and that

phase of the complaint, along with any other phases of the complaint, is pure fabrication.

Q. You have been charged with coercing hospitals not to accept patients who were members of commercial hospital associations. Have you, either singly or in combination with others, ever done that? A. I would say again that is a pure fabrication.

2011 Q. You have been charged with a conspiracy here in which you have brought about a situation where doctors will not consult with doctors who work for or are associated with commercial hospital associations. Have you ever done that, either singly or in combination with others? A. I would say again that is a fabrication.

Q. I take it, then, you deny each and every allegation of the complaint? A. Yes. I think that is just an effort to smear the medical profession by a political coterie which are seated at this table here from the Attorney-General's office, representing the Red wing of the Federal Administration.

The Court: That is stricken, Mr. Jaureguy.

Mr. Jaureguy: What is that?

The Court: That is stricken. That answer is stricken.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. On direct examination, Doctor, you testified that the disciplinary proceedings you mentioned were not designed to affect hospital associations. You then testified they were not really disciplinary proceedings at all. You then testified that it was purely coincidental that in these proceedings hospital associations were involved.

2012 You also testified on direct that there was no effect, as far as doctors were concerned, in being disciplined.

You also testified that you never attempted to have doctors expelled. A. Will you repeat that, please?

Q. You also testified you never attempted to have doctors expelled, and you testified— A. Pardon. Expelled from what?

Q. It was in response to a question by defense counsel that had to do, as I understood it, with some medical society.

You also testified the American Medical Association and the medical societies had nothing to do with one another

in so far as the societies with which you have been associated made decisions with respect to unethical practice.

Now, Doctor, isn't it true— A. Pardon me. I didn't make the statement that we had nothing to do with making decisions regarding unethical practices. That was not the question that was given to me.

Q. As I understood it, you made the statement on direct that, in making your determination to take such action as you took with respect to unethical practice, they had no part in it? A. I didn't say that.

Q. What did you say, then? A. You can read it out of the record.

Q. Then I will ask that the record be read. A. 2013 That was not the question that was asked me. The question that was asked me was whether, in our deliberations in the State Society, we were influenced by the American Medical Association. The question of unethical practice was not brought into the question.

Q. I see. As a matter of fact, isn't it true that you were in the forefront of the doctors in the societies, attempting to eliminate hospital associations and to deter doctors from associating with those associations? A. No, I wouldn't say that.

Q. Can you name some persons who were more active in that regard than yourself? A. In doing what?

Q. In disciplining these members and attempting to get them to disassociate themselves from the hospital associations? A. I was given a job which I did not look for. I did not initiate any of these proceedings except so far as information came to the Grievance Committee and we were compelled to act upon them.

Q. Then, would you regard yourself as a [redacted] conspirator? A. I do not regard myself as a [redacted]ator.

Q. Well, now, Doctor, I call your attention to Exhibit 292, which consists of the minutes of the Council of the Oregon State Medical Society of February 3, 1936. At that time several persons got up and spoke, and then the minutes state:

2014 "Dr. Martzloff stated that, while the first test case of disciplinary action would probably develop in the Multnomah County Medical Society, the problem will undoubtedly come before the State Society and that, furthermore, such a case would supply a pattern of proper procedure for all the component societies. He stated that for these reasons the employment by the State Society of

legal counsel to assist the component societies in handling ethical problems was entirely proper and necessary."

Is that one of the absurdities you mentioned on direct, Doctor? A. Nothing absurd about that.

Q. No, I don't think so, either. A. That has nothing to do with hospital associations.

(Recess.)

Q. Doctor, I would like to call your attention to this item that appeared in Northwest Medicine in 1936. It is in Exhibit 277.

It states here:

"President Massey introduced Olin West, Secretary of the American Medical Association. An informal discussion concerning various current problems of concern to the medical profession followed. Dr. West and numerous
members of the House participated in the discus-
2015 sion."

Then, in the report of the Committee on New Business it states:

"Your committee recommends that the report of the Committee on the Revision of Constitution and Bylaws and its recommendation for a careful review and drafting of needed amendments be adopted; and further that the suggestion of Olin West, Secretary of the American Medical Association, that each component society be requested to review and amend its constitution and bylaws in conformity with that of the State Society, particularly with regard to disciplinary procedure, be followed out.

"On motion of Dr. Booth, seconded by Dr. Martzloff, it was unanimously voted that this recommendation be adopted."

Doctor, don't you think that makes an absurdity out of the statement you made on direct as to the American Medical Association never having participated in any discussions that your group had with respect to the steps you were taking with regard to these unethical practices? A. (Pause.)

Q. I gather you do not want to answer that. A. Yes, I want to answer it. Possibly I wanted to consider the question a little bit before answering, without falling
into some legal trap you may have set for me.
2016 Q. If you do not want to answer it, Doctor, that is up to you. A. That still does not make my origi-

nal assertion incorrect, and my original assertion I think is still correct. There was no reason why the American Medical Association could not come in and discuss these things with us. That does not mean they are telling us what to do, and we are willing to accept advice from wherever we can obtain it, when it seems to be good advice.

Q. Dr. Fitzgibbon testified—

Mr. Jaureguy: I don't think he was through with his answer.

Mr. Marcus: I thought so.

A. Go ahead.

Q. I believe Dr. Fitzgibbon testified that this representative of the American Medical Association was there on invitation of the State Society. Is that your recollection? A. Yes, I would guess he was; no reason why the State Society should not ask for consultation and advice from another organization. That does not mean we have to accept it or later accept it.

Q. Doctor, I do not believe it was brought out on direct whether or not you have had any official connection with the American Medical Association. Could you tell us whether that is or is not so? A. Well, only in so far as the fact that I am a member of the American Medical Association and have, at various times, been, I think, an alternate delegate to the House of Delegates of the 2017 AMA.

Q. You have attended a number of their meetings, isn't that so? A. Scientific meetings, not business meetings. I think I have been to one session of the House of Delegates of the American Medical Association. That is the only business meeting I have ever attended.

Q. Isn't it true that you had a penchant for making charges of unethical conduct against doctors? A. News to me.

Q. Do you recall having made such a charge against one doctor for advertising, and having made a complaint to the Council of the Medical Society? A. I don't recall.

Q. I do not want to mention that doctor's name in court, so I will ask you to look at Exhibit 731 and see whether that refreshes your recollection. A. You are asking me to read this?

Q. Sufficiently to refresh your recollection. That letter at the bottom is what I am talking about. A. Which part of it do you want me to read, the letter at the bottom?

Q. After you have seen enough to refresh your recollection as to whether you made a complaint to the Council with respect to an individual doctor because of his advertising— A. Just from scanning this; I have
2018 not seen enough yet to refresh my memory. I see my name typed at the end of this resolution.

Q. Well, without fencing with you about that, you are content to take what is in the record, are you not? A. Well, I suppose it is something I had something to do with, but I don't recall offhand. I would have to read it in detail before I could comment.

Q. Now, Doctor, these disciplinary proceedings, which were not disciplinary proceedings, you were in fairly regular attendance at them, were you not? A. Yes, I would assume so.

Q. You hardly missed one, isn't that so? A. I think as a member of the Grievance Committee I was probably present at each one.

Q. Don't you think the doctors involved in those proceedings thought that they were disciplinary proceedings? A. I don't know. They didn't express themselves to me. I think some of the men very definitely felt they were being picked upon, truly. I would feel that way if I were put in that position.

Q. I asked you whether they hadn't thought they were being subjected to disciplinary proceedings. I am not asking you whether they were being picked on or not. A. You are asking me what they thought. I don't know
2019 what they thought.

Q. What did you think about these proceedings? Were they or were they not disciplinary proceedings, or were they a kangaroo court?

The Court: What is a kangaroo court? I have heard that expression all my life.

Mr. Marcus: That is supposed to be an illegal court, set up to do—

The Court: What does the "kangaroo" have to do with it?

A. Doing what you are trying to do right now, isn't that it?

Mr. Marcus:

Q. That, Doctor, I am afraid is an aspersion upon this Court and not on me. I am not conducting this trial. A. I thought you were.

Q. No, the Court is in charge of the trial. I am merely in charge of the Government's presentation of the case.

(Previous question read as follows: "What did you think about these proceedings? Were they or were they not disciplinary proceedings, or were they a kangaroo court?")

Mr. Marcus:

Q. What did you think about them? A. I have already expressed myself about them. They were not primarily done with the idea of being disciplinary or unfriendly.

Q. They were friendly proceedings to expel doctors from the Society, is that right? A. That is your interpretation, not mine.

2020 Q. Well, what is your interpretation? A. I have already given my interpretation.

Q. I gather, then, you have no recollection of anything that happened and your part in it, is that right? A. I haven't given it that much thought. You have been doing most of the thinking for me here, Mr. Marcus.

Q. I would rather have you do your own thinking. That is why I am asking you this question. A. You have done a lot of thinking in this indictment, or this complaint, which I don't understand.

Mr. Marcus: Your Honor, I am going to have to ask that this witness be directed to answer the questions and not to get involved in any argument.

The Court: I won't do it unless I have to, and I know in this case I will not have to. That is all. Answer.

A. I wish to assure his Honor I have all due respect for the Court, but I do not like to have this—

Mr. Marcus:

Q. I gather you don't like to be cross-examined. A. I do not like your whole technique. I do not like the smear tactics pursued by you in this suit, which is apparently for the purpose of discrediting the medical profession, a good old recognized Hitler technique.

Q. I suppose all the witnesses we have put on—employers, doctors who have been expelled, union men and patients, all who appeared in this court,—wanted to smear you particularly, is that correct? A. No, I do not

2021 feel myself particularly picked upon, but I do feel that this is a political trial, Mr. Marcus, and I think you recognize it as such.

Q. Doctor, I imagine that you are entitled to your own opinion, and I am not going to go into any discussion—get into any discussion with you as to your opinion. At the same time I would ask you to answer the questions that I ask you because that is what you are here for. A. I will answer every one of your questions that I can fairly answer.

Q. You mean you cannot fairly answer the question as to what you thought these proceedings were? A. I have already expressed that.

Q. You were one of those or you were the person, were you not, that wanted a continuation of this Grievance Committee when it first started out? A. When it first started out, you say?

Q. Yes. The disciplinary proceedings, which were initiated by the Grievance Committee, as I understand it, started in 1936. Is that correct? A. I suppose that approximate time is correct; yes, sir.

Q. These committees are appointed on a yearly basis, are they not? A. Yes, I believe so.

2022 Q. And when the year was up it was you who wanted to have the Grievance Committee continued, is that not so? A. I don't recall, Mr. Marcus.

Q. Well, I call your attention to Exhibit 730, which comprises the minutes of the Council of the Multnomah County Medical Society for January 6, 1937:

"Dr. Martzloff announced that consideration should be given to the continuation of the Grievance Committee created last year and to the personnel of this committee. Upon motion duly made and seconded, it was voted that the following resolution be adopted."

Does that recall to you your active participation? A. I don't remember that chiefly, no. I do know, of course, that the Grievance Committee was in existence for a matter of several years' time, still being in existence as far as I know.

Q. You do not deny, do you, that you played an active part in the formulation of the policies of the State and local County Society with respect to the contract practice of medicine and to actions taken against doctors who you thought were not complying with proper standards for such practice? A. That is a multiple question. If you will ask one question at a time, I will try absolutely to answer it.

Q. In formulating the policy of the State and local County Medical Society with respect to the attitude of

that society as to the contract practice of medicine—
2023 A. I don't recall that I was active in formulating the policy of the Society in relation to contract practice; possibly in relationship to the observance of the Constitution and Bylaws of the Multnomah County Medical Society and the State Society, yes.

Q. That committee had to do with respect to the contract practice of medicine, did it not? A. I don't recall that activity was involved and centered around contract practice, no, sir.

Q. It centered around the fact that these doctors allegedly were associating themselves with hospital associations, which, in turn, were soliciting patients and advertising, is that not so? A. The thing that we were concerned with was a violation of the Code of Ethics, in so far as these men were involved, either directly or indirectly, in involving themselves in practice obtained through solicitation and advertising and having their services brokered by a third party who also profited by the doctors' services.

Q. And that was in connection with their associating with hospital associations, is that not so? You stated that it was coincidental, but it is true that it was in connection with their associating with these hospital associations? A. My original statement still stands.

Mr. Marcus: Would you mind reading that ques-
2024 tion again?

(Question read.)

Q. Did you make any such statement? It is true, is it not,—let me ask you that— A. No, our whole attitude in this was that, after all, the individual did not have to be unethical merely by working for the commercial hospital associations; could just as well be unethical by working for the Multnomah Industrial Health Association which was looked upon as being a doctor-sponsored organization.

Q. You classified them all at that time into one category, did you not? A. No. It just so happens that these organizations, the individuals who worked for these organizations were committing the same type of violation.

Q. I believe you said something on direct with respect to your concern for prepaid medical care for low-income groups, is that so? A. Yes, sir.

Q. Isn't it true, Doctor, that what you were concerned with at that time was the competition that might accrue to doctors in private practice because of these prepaid medi-

cal care organizations providing medical care for the low-income groups? A. Your question is that we were confronted with competition, did you say?

Q. Yes, the private doctors. A. Our concern primarily was for the production of some type of prepaid medical care that would produce—that would fulfill a real public need and produce public service.

Q. You had no concern for the economy aspect of the matter? A. Not primarily.

Q. You say "not primarily"? A. That is right.

Q. Do you mean not at all or substantially? A. There has to be an economic aspect to any type of service that is given.

Q. You were not concerned with whether or not there may be competition to private doctors from prepaid medical care organizations taking as subscribers persons above the low-income group? A. Not that I recall.

Q. Well, Doctor, I will read from the famous Martzloff report, Exhibit 209. You are criticizing the Multnomah Industrial Health Association.

"It has made no study to fix the maximum income level which would define eligibility as a 'low-wage' earner. The maximum level was first arbitrarily fixed at $1500 per year and later arbitrarily raised to $1800 per year. By failing to fix a sound and definite income level it has brought under a so-called 'low-wage' earner's plan any person; for example, executives and schoolteachers, who have heretofore been willing and able to support regular private practice.

"Its operations have resulted in a decreased income for that part of the profession within the Multnomah Industrial Health Association from patients who are able to pay customary fees and in the loss of some of these patients by doctors outside the association."

Do you recall that, Doctor? A. Yes, sir, but that is not the primary concern of that report.

Q. Well, I call your attention to the fact that this report lists thirteen points of criticism and I have read from Points No. 2 and No. 3. A. That is only one small segment of the report. All that report is supposed to be is a factual report designed to study the operations of prepaid medical care in Portland.

Q. And I suppose designed to influence the policy of the Medical Society to which it was submitted. A. I don't understand that question.

Q. It was also designed to influence the policy of the Medical Society to which it was submitted, is that not so? A. Designed to do what?

(Question read.)

A. That is a factual report and on the basis of the information which we obtained from our study we made certain motions and recommendations, for what they
2027 might be worth.

Q. It is true, is it not, Doctor, that your committee was successful in putting the Multnomah Industrial Health Association out of business, in the form it had been doing business? A. Our committee did not have anything to do with that. That was entirely, I think, a matter for action of the Council. Our committee did not control the Multnomah Industrial Health Association, nor did the Council of the Multnomah County Medical Society.

Q. It is true, is it not, that this report was submitted to the County Society, then adopted by the County Society, and then the Society adopted a resolution to terminate the existence of the Multnomah Industrial Health Association in the form it had been operating before? A. I don't know what the definitive action on that was by the Society. I do know that the Multnomah Industrial Health Association, as it was being operated at that time, either went out of existence or underwent some type of change.

Q. Do you mean after this report was made you then took no further action with respect to Multnomah Industrial Health Association? A. Not to my knowledge.

Q. Not even as a member of the Council? A. I don't recall.

Q. Doctor, you stated you have been on the Board
2028 of Trustees of the Northwest Medicine, and I believe you said that you got objections from time to time to certain items that appeared in Northwest Medicine. Is that not so? A. In the Oregon section of Northwest Medicine.

Q. Yes. With that qualification the answer is Yes? A. Yes, sir.

Q. You testified, I believe, on direct that the Board of Trustees of Northwest Medicine meets once a year. How did you get these objections? How did they come to you? A. Directly by word of mouth and by telephone.

Q. Did any come in writing? A. Not to my knowledge.

Q. Would you expect that to be true of the other trus-

tees? A. I would have no way of knowing. I would guess so, yes.

Q. Now, Doctor, I believe you testified you held certain offices in both the local and State Society. You were also on a number of committees during this period, were you not? A. Yes, sir.

Q. Were you on the Bureau of Medical Economics? A. I don't recall. I may have been, but I don't recall. I have my doubts.

Q. Do you recall being on a committee to revise and amend the Constitution of the Multnomah Medical Society? A. Yes, I believe I was, a good many years ago.

2029 Q. Now, Doctor, do I understand you still think you and the medical societies were justified in the action you took to discipline these doctors? A. I think definitely we were justified in taking the action that was taken.

Q. Your answer is Yes, then, is that so? A. My answer is just exactly as it is given.

Mr. Marcus: That is all, Doctor.

Mr. Jaureguy:

Q. Your answer is just exactly as you gave it, you say? A. Yes, sir.

Mr. Jaureguy: That is all.

(Witness excused.)

2030 DR. FRANKLIN UNDERWOOD was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Will you state your name, please. A. Franklin J. Underwood.

Q. You live in Portland? A. That is right.

Q. What is your business or profession? A. Physician.

Q. You have been a practicing physician how long? A. In Oregon since 1936.

Q. Did you practice elsewhere before that? A. Just in hospitals during a course of training in California.

Q. What was your medical training, could you give us

that? A. Postgraduate education, three years at the University of California in internal medicine.

Q. Then, you came to Oregon in 1936? A. Yes.

Q. Have you practiced here ever since? A. Yes, except for three years during Army service.

Q. When was that? A. That was from July, 1942 until about October, 1945.

Q. Are you a member of any medical society? A.
2031 Yes, the Multnomah Medical Society, the Oregon State and the American Medical Association.

Q. You have belonged to those societies since about 1936? A. Yes.

Q. Continuously? A. Yes.

Q. Have you ever had occasion to treat patients who were members of commercial hospital associations?

Mr. Marcus: Your Honor, I would like to make the same objection with respect to this line of testimony as made with respect to that of Dr. Durno.

The Court: The ruling will be the same. The testimony will be admitted subject to the objection.

A. Yes, I did. Soon after beginning practice in 1936, I saw a number of patients—I would say 1937 or 1938, in that era. I can't remember exactly. I did see patients of such hospital associations.

Q. Then, did you continue that practice or did you stop? A. No, I discontinued the practice about, I would say, about 1938 or 1939. I stopped taking this type of patient. The reason I did so was because it was becoming at that time increasingly apparent that many of the physicians objected to the practice of these organizations because of the fact that they were a closed type of panel.

Q. Did you notify the associations that you were
2032 not going to— A. Yes, I did. I notified one of them, the only one with whom I was dealing.

Q. That was the National, was it? A. That is right.

Q. Then, when you came back from the Army, did you have that problem presented to you, when you were accepting tickets? A. Following the return from the Army, I found the situation entirely different, and at that time I found that generally patients were being seen by most of the physicians, as far as I could tell, around Portland, and at this time the organization did not have a closed panel and had changed to some extent, in that it was on insurance type of coverage. Consequently, I resumed seeing patients for this organization and others and since then have continued to do so.

Q. Has there been any objection by any medical society to your doing so? A. No, there never has—never was.

Q. Were you subpoenaed by the Government in this case? A. Yes, I was.

Q. But they did not call you as a witness? A. No, sir.

Q. Do you feel you have been subject to coercion, harassment, threats or compulsion by any medical society so that you have not been able to practice medicine? A. No, sir, I never have at any time. This was entirely
2033 done on my own initiative.

Mr. Jaureguy: Take the witness.

Cross Examination

By Mr. Galassi:

Q. I think you testified you were in practice here in Portland since 1936? A. That is correct.

Q. Have you ever been a member of the local county and state societies since that time? A. Well, I initiated action to belong to the Society prior to my coming to Portland in 1936, and just when that went through I can't give you the exact date, but it was shortly after that.

Q. Have you, since your membership, ever been an officer of the Multnomah County Medical Society? A. Yes, I was, two years ago. A year before last I was Secretary of the County Society.

Q. You have been on the Council? A. Not except as Secretary of the Society, who is a member of the Council.

Q. Were you on any of its committees? A. The only committee I have been on was last year I was on a committee on public relations, the Public Policy Committee, last year, which was an inactive committee.

Q. You say that is the only committee you have
2034 been on? A. That is the only committee I have been on.

Q. Have you ever been an officer of the State Society? A. No, sir, I never have.

Q. Have you ever been on any of its committees? A. No, sir.

Q. Have you ever been a delegate? A. No, sir.

Q. Have you ever had any position with the Oregon Physicians' Service? A. No, other than being a member.

Q. You are a participating physician? A. I am a participating physician.

Q. You testified in your dealings with commercial hospital associations before the war, you ceased about 1938 or thereabouts? A. Approximately.

Q. The reason for doing so was that they had closed panels at that time? A. Yes, sir.

Q. You also testified you wrote discontinuing your association with one of those? A. I don't believe I so testified. I said I notified them. To my recollection, I did not write. I can't be sure of that, however. I either called them on the phone or wrote. I do not recall.

Q. I would like to read you, Doctor, from Plain-
2035 tiff's Exhibit No. 21, which is a letter of February 7, 1940 on your letterhead to Mr. Page of the National Hospital Association:

"In view of the stand taken recently by the Medical Society regarding contract practice, and because it is necessary for me to maintain a favorable position with the Society, it seems best that I should discontinue the reference work that I have been doing for the National Hospital Association.

"I should like to say that I have enjoyed the National work very much, and am very grateful to you and to the National staff for the reference work which you have sent.

"Cordially yours, F. J. Underwood, M. D."

A. I did write. I had forgotten that I wrote. Essentially, that is what I testified, what I meant. There is no contra-indication of the fact of my reasons for discontinuing the Association.

Q. You are a specialist, are you not? A. Yes, sir.

Q. In your specialty, it is not customary, is it, for you to see very many of these hospital association patients? A. No. There were not a great many or a great number of patients. Most of them were referred patients.

Q. As to your testimony on direct with regard to dealing with these associations after the war, I think you said you resumed because they do not have a closed panel
2036 now? A. That is correct.

Q. Is that reason altered any by the reason you gave in the letter? A. No. My association with National Hospital Association before the war was always a pleasant one. They always treated me very well. The reason for discontinuing or seeing such patients was the reason that I gave, one, because it was a closed panel which, in one respect, was not good for a large number of physicians who belonged to the Society; in the second place, it limited the free choice of physicians by patients. Those were the

primary reasons motivating the letter and discontinuing seeing those patients.

Q. You just said a while ago you did not see very many of these patients, so you are not now taking their tickets, are you? A. No, I never have taken tickets.

Q. Going back to the letter you wrote in 1940, and the reason given in that letter, it is true, is it not, you would not likely have written this as a reason if you had not believed that it was so, namely, as you stated, "because it is necessary" or because of the position which the Society had taken with respect to contract practice and the necessity to keep a favorable position with the Society, you would have to cease? A. Obviously, if I did not concur in the majority of the opinions I would not have written such a letter. I believed that myself, along with a
2037 majority of physicians in the Society, or I would not have broken that relationship.

Q. You did understand that was the policy at that time? A. The reason that I stopped taking cases was not because the Society ever called on me to exert any coercion whatsoever, or exerted any coercion whatsoever on me, but because I voluntarily wanted to quit for the reasons which I have stated.

Q. The reasons which you set forth in the letter? A. The reasons which I stated in the letter do not necessarily include a detailed, overall picture of my thoughts on the matter. As I say, the association that I had with National had been a pleasant one. I did not go into complete detail as to why I was discontinuing the association. I did give them a letter which was definite that I did not want to see further patients, but that our associations had been pleasant, and I was about to discontinue them.

Mr. Galassi: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. Did you accept checks from commercial hospital associations during the time of your service? A. I never had checks presented to me. I simply billed the patient directly and let them deal with the Association. I do that at the present time.

2038 Q. Do you fill out forms for them? A. Yes, I do.

Mr. Jaureguy: That is all.

(Witness excused.)

2039 DR. CARL H. PHETTEPLACE was thereupon produced as a witness on behalf of the Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Will you give us your name, Doctor? A. Carl H. Phetteplace.

Q. Where do you live, Doctor? A. Eugene, Oregon.

Q. How long have you lived in Eugene? A. In and about Eugene since—I have lived near Eugene, in and near Eugene, nearly all my life. I was raised on a farm near Eugene and have been there nearly ever since with the exception of when I was away to medical school and in the service and at Powers, and in training.

Q. What is your occupation? A. I am a physician and surgeon.

Q. You practice in Eugene? A. Yes.

Q. How long have you been a physician, practicing? A. I graduated from medical school in 1924.

Q. From what medical school? A. University of Oregon.

Q. Then you went from there into practice? A. Yes, sir. I went to Powers as a temporary, to relieve
2040 another doctor, and practiced a year or two in Powers before getting some more training.

Q. And then you got further training elsewhere? A. Yes.

Q. Then, where did you start to practice? A. In Springfield, near Eugene.

Q. You were in Springfield how long? A. Approximately three years.

Q. Then, you went to Eugene? A. Yes.

Q. And have been there since? A. Yes, sir, in 1930, I went to Eugene.

Q. Are you a member of any medical society? A. I am a member of the Lane County Society and the Oregon State and the American Medical Association.

Q. You have belonged to those societies how long? A. My application for membership was put in almost immediately when I started to practice, and I have been a continuous member of the County and State and National Societies ever since.

Q. During your practice, have you had occasion to treat patients who are members of commercial hospital associations? A. Yes, sir.

Mr. Marcus: Your Honor, I would like to object to this same line of testimony on the same ground as with respect to the testimony of Dr. Durno.

2041 The Court: The ruling will be the same. The testimony will be admitted, subject to the objection.

Mr. Jaureguy:

Q. Do you know what the expression means "taking tickets"? A. Yes.

Q. Did you take the tickets of these hospital associations? A. I have had none presented to me for a period of years. I can't tell you exactly how long. I used to have quite a few presented in years gone by but in recent years I have not seen them, as I recall. They have been very rare, if I have. I don't recall any for several years.

Q. Was there a time when you had a lot of them? A. Not a lot of them, but I did see quite a few when I first began to practice, in Springfield especially. I didn't, in Powers, but in Springfield there I saw quite a few of them.

Q. Did you ever stop taking tickets? A. Well, yes, in this sense, that I told patients that I did not work for the Association; that I would take care of them and let them make their arrangements with their carrier, as they saw fit.

Q. What was your reason for not taking tickets in the manner you have described? Was that a result of experience or what? A. Oh, back long before the present controversy, when I was practicing in Springfield, I used to see people with these tickets, and would render service, and then when I went to present my bill,—I par-

2042 ticularly remember this with regard to the National Hospital Association. I am not sure whether this applied to the Industrial Hospital Association or not. Those are the only two I recall ever taking tickets for, but in regard to the National I regularly was not paid for my services, and when I would take it up with the manager—I I had known Mr. Bechtold quite awhile, even before I graduated from medical school. I even came down to discuss it with him once in Portland, and he told me that they had their doctors in that area and that they could not just let every doctor treat their patients; they had their own panel set up, or their men set up to do that; and if I treated them, it was too bad, there was nothing that could be done about it. I even made a personal visit to Mr. Bechtold to discuss that matter and tried to get an arrangement made with him so I could be compensated for my

services rendered, as I oftentimes rendered that service not knowing that they were hospital association people and then finding I could not be paid.

That, of course, led me to change the very friendly attitude I had had towards the organization to one of a more unpleasant one, and on account of these matters I decided not to work for them for obvious reasons, but that attitude did carry on through to this controversy that I think is now under discussion.

Q. What controversy is that? A. I am talking
2043 about the controversy about the medical society's action.

Q. Oh, you mean this lawsuit? A. That is right.

Q. When you were practicing in Springfield and patients came to you who were members of hospital associations, then, what did you do, when you were not on the panel and would not be paid? A. Well, I would tell those patients I could not—that I was not on their panel. They had a list of doctors in the county to which they could be sent, and I would usually tell them—I could tell them they could go to Eugene, as there were no doctors in Springfield that I knew of on their panel, and there were doctors in Eugene. I told them they could go there, and that I could not take care of them.

Q. Did they go to Eugene then? A. Some of them would, and some of them would—in some cases I was the family doctor for the man and sometimes he would say, "Well, take care of me anyway," and would pay me and sometimes they would—the reaction was not always the same.

Q. But at that time, did you get paid for any of your work you did? A. With regard to the National Hospital Association, I can't recall that I ever did. I can't recall being paid. I might have been, but I don't recall being paid. I did not have a lot of it because I did not
2044 have much practice at that time, either. It was not important in my practice.

Q. In Eugene, Doctor, there are some doctor-sponsored prepaid medical care plans, are there not? A. Yes, sir.

Q. Those are what? A. One known as the Eugene Hospital Association, or the Eugene Hospital & Clinic, and the other the Pacific Hospital Association.

(Thereupon a recess was taken until 2:00 o'clock P. M.)

2045 Court reconvened at 2:00 o'clock P. M., pursuant to recess.

DR. CARL H. PHETTEPLACE, a witness on behalf of Defendants, having previously been duly sworn, resumed the stand and further testified as follows:

Direct Examination (Continued)

By Mr. Jaureguy:

Q. Doctor, as I recall, I was asking you about the doctor-sponsored prepaid medical care plans in Eugene. A. Yes, sir.

Q. One of them is the Eugene Hospital & Clinic; the other, I think you said, is the Pacific Hospital. A. The Pacific Hospital Association.

Q. Can you tell us about how long they have been in existence, Doctor? A. The Eugene Hospital Association has been in existence long before my time, and I would say—it sort of grew up with the lumber industry in that part of the country and probably has been in existence for, oh, I should say thirty years or more.

Q. Was it in existence when you went there? A. Yes, it was, before I ever practiced.

Q. Are you a member of either of these groups? A. The Pacific Hospital Association, yes.

2046 Q. Can you tell us what proportion of the doctors in Eugene belong to one or the other of those? A. There are roughly one hundred doctors around Eugene, a few miles, and I think the Eugene Hospital staff comprises about twenty and a majority of the remaining doctors belong to the Sacred Heart in some capacity, and some of them are not full-fledged—I mean Pacific Hospital Association. Some of them may not be full-fledged members, but at least they are affiliated in some way and do work for them.

Q. That has been in existence, you say, since about when? A. I believe it was organized approximately in 1933. I am not sure of the exact year, but near that time.

Q. Have you ever been an officer of the Lane County Medical Society? A. Yes, I was on the Council for three years and I was president-elect one year and president the following year. I believe that I was president—I believe the year that I was president was 1940.

Q. When were you on the Council? A. Three years preceding my presidency.

Q. So that you were on the Council, either as president or otherwise, from about 1937 to 1940? A. That is right.

Q. Was there ever, in that period of time, along in that period of time, any discussion in the meetings of the

Council or the Lane County Medical Society with
2047 respect to hospital associations? A. Yes.

Q. Just tell us what happened then? A. Well, there was always a criticism, when it was first proposed, both on the part of patients and doctors, about the limited choice of physicians, and the contracts were serviced by very few men and that service was limited to those men for the most part.

Both patients and doctors always felt that there should be a free choice of physicians, and then of course there would be the point, or was the point, of outside interference between the doctor and patient that gave rise to discontent. Those were some of the earliest causes of contention and then particularly during the depression there was discontent over the matter of compensation.

Mr. Marcus: Doctor, am I to understand you are talking about matters that were discussed at Council meetings? That is what counsel for the defense asked you.

A. Yes.

Mr. Marcus: I am not certain.

Mr. Jaureguy: Well, I didn't ask that, but I will lead up to that point.

A. I may be in error in going back too far trying to give the background for the discussion in the Council. This discontent grew, and it naturally led to discussions
2048 in the Council as to what to do with the problem.

Maybe I should not have gone that far, but as a result of the unhappiness of many doctors naturally the dissension would be voiced in our meetings. That led to many discussions as to what to do with the problem.

Mr. Jaureguy:

Q. What did the Council do, if anything? A. It was decided—one of the solutions offered was to establish our own hospital association. It was always the belief, or for a long time we have believed in the principle of prepaid medical care organizations to distribute the burden of cost, and it was felt if it was doctor-owned and operated to give service to the people directly, without interference, it could be done more efficiently and properly in every way and, so, we organized the Pacific Hospital Association to try to handle this thing ourselves.

Q. That was organized in the early '30s, as I recall? A. That is right.

Q. I have reference particularly to the period when you were on the Council. A. On the Council—at the time I was on the Council there was a good deal of discussion relative to the problem of some of our men—only a few men who were on the preferred list with the outside or commercial hospital associations—the commercial hospital associations held a large number of the important payrolls in the community. We felt that this limited
2049 group of doctors was not good for the public or the doctors, and that we should get them to join up with our own doctor-owned hospital association, and cooperate, rather than to hold these contracts or service these contracts.

Q. What, if anything, did the Council do to try to bring that about? A. I can remember of more than one occasion at which we talked to the doctors who serviced the contracts, the men who serviced the commercial hospital contracts, and tried to persuade them to discontinue it. We felt it was not ethical to cooperate with a third party selling our services and directing the kind of care. I remember one occasion at least that we had some of the men in the Council meeting and discussed it with them, and on some occasions after the meeting we would send a representative to discuss it with them, and an attempt was made to work the thing out with the men, and this was accomplished.

Q. How long did those efforts continue? Was that something that was continuous, or did it terminate? A. I think the main problem was in the years probably around 1936 and 1937 to 1940, around in that time. I don't think since 1940 there was ever any discussion very much about it. I think the men all discontinued servicing these contracts, exclusively at least.

One of the things, too, that was accomplished, which I forgot to mention, is that we did get all the hospital
2050 associations to open up the panels so that all doctors could work. There were a number of attempts made at solving the difficulty and having the thing opened up so that all doctors could service the contracts. There was quite a little period during which various means were tried to work the thing out, and it is rather difficult to answer it in a short manner.

Q. What is the situation now, and what has been the situation in the last few years down there? Has it been an open-panel system? A. Yes. There has not been any problem at all that I know of. There has been no discussion of it in our meetings for several years that I know of, and

I think every doctor does as he wishes about the matter. It is just not discussed. It is not a problem.

Q. You were telling us about your experiences with the National back in the earlier days. I think there is one thing you did not mention, and that is that before you attempted to practice you worked for National? A. Yes, as a senior in medical school I had a little job with the National Hospital Association, going to the St. Vincent's Hospital every evening to see patients that had been admitted for that day, and writing their histories and physical examinations, examining them as interns do. I was employed and got a little money each month for that.

Q. That is how you became acquainted with Mr.
2051 Bechtold? A. Yes, it was.

Q. During the last few years have you been treating patients who were members of Industrial or National? A. For some reason I have not seen them to amount to anything. I may have occasionally seen some. I believe they handle their ticket system a little differently than they used to, and the girl in the front office takes care of a lot of that work. I think I have seen some of them that have a blank that is filled out, like insurance carrier blanks that I may have filled out, but I do not seem to get them for some reason. Whether I am on their list yet or not I don't know, but I do not seem to see many of them for some reason. Whether I just don't have that kind of practice, I don't know.

Q. Are you on the OPS list of cooperating physicians? A. Yes, I believe I am.

Q. Are you on the staff of any hospital? A. Yes, Sacred Heart Hospital.

Q. Is Dr. Edblom on that staff? A. He was our chief of staff last year.

Q. Has he been on the staff regularly? A. Yes. I think when he first started he was—I think when he first started to practice medicine he was a member of the Eugene Hospital staff. During the early years of my time in Eugene, however, he resigned from the Eugene Hospital staff and opened up an office of his own in Eugene. He has
2052 been a member of the Sacred Heart Hospital staff for that long, which I think must be nearly twenty years now.

Q. When you were at Springfield, did the National have any important contracts there? A. My recollection is that they had most of them, that there was a large con-

struction company operation going on in connection with the Willamette Highway, that now is the road from Eugene to Klamath Falls, over Willamette Pass. They had that, as I remember, and they had a contract with a large lumber concern, and a construction concern. Most of the large contracts I think were held by the National and some by the Industrial Hospital Association.

Q. That was during the period that National would not let you take care of any of their patients? A. That is right.

Q. I understand that there was no other doctor in Springfield? A. Not to my knowledge. There were three or four in Eugene.

Mr. Jaureguy: Take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, on direct examination you stated that there came a time when you decided not to take hospital association tickets, and I believe you said you notified your patients to that effect. Is that not so? A. I didn't
2053 say that.

Q. Well, that is my understanding of what you did say. A. I am sorry. I think you misunderstood me. They told me that I would not be permitted—the National Hospital Association told me they had the wrong panel.

Q. I am talking now of what occurred when you came there, after you came to Eugene. Wasn't there a period after you came to Eugene when you told your patients you were no longer treating them as hospital association patients? A. Not "no longer." I had never been a National Hospital Association doctor, never had treated them.

Q. You never had treated them while you were in Eugene? A. I might have occasionally but, as I say, I had never been appointed as one of their physicians. Occasionally somebody would come in and I treated them without knowing and I might have, on some occasions, received compensation, but I was never an official National Hospital doctor in Eugene. There was a time when it was opened up that I might have been treating some of them.

Q. Did you at any time, or did you not, while you were in Eugene tell your patients you would no longer accept their tickets as hospital association patients? A. I don't think I did because I had not been their doctor.

Q. Doctor, did there ever come a time while you were in Eugene where, as a result of medical society policy, you told the hospital associations you were not
2054 going to accept their tickets? A. I don't recall ever telling a hospital association.

Q. You believe you never did? A. I don't believe I did. I may have. I don't remember it.

Q. Doctor, I am now reading from Exhibit 1403, a letter dated November 12, 1937, to the National Hospital Association. The letter is signed by you and Dr. Perry. I will ask you whether you were associated with Dr. Perry. A. Yes, Dr. Perry.

Q. It is a letter to the National Hospital Association:

"For your information on and after January 1, 1938, we will be unable to render medical services to any patient covered by the National Hospital Association contracts."

I want to read from another exhibit, No. 619, a letter from the same persons, one of them being yourself, dated November 12, 1937, to the Industrial Hospital Association:

"For your information, on and after January 1st, 1938, we will be unable to render medical services to any patient covered by Industrial Hospital Association contracts."

You seem to have quite a good memory as to what happened prior to 1930 in Springfield, but you can't remember that, can you? A. I didn't remember it, no.
2055 Q. Do you deny that you sent those letters? A. No, I don't.

Q. Isn't it true, Doctor, while you were a member of the Council this matter of dealing with the hospital associations came up and it was decided not to deal with them? A. This matter was discussed in the Council meetings, yes, and I think it is true that we decided we would not deal with the commercial hospital associations for reasons which I think have been brought out here.

Q. You say you are connected with the Pacific Hospital Association? A. That is right.

Q. Can you tell us whether you have ever held an office with that association or been on their Board of Directors? A. Yes, I have been.

Q. Doctor, it is a fact, is it not, that the Pacific Hospital Association has felt it necessary at times to cut down on the fees of the doctors? A. Yes, that is right.

Q. And your association has had complaints about OPS

cutting down fees in that area, isn't that so? A. Well, I have not heard that. I wouldn't know.

2056 (Photostatic copy of letter by Pacific Hospital Association to Dr. H. R. Allumbaugh, dated October 20, 1948, was thereupon marked for identification Plaintiff's Exhibit No. 2065;

(Photostatic copy of letter by Pacific Hospital Association to Oregon Physicians' Service, dated January 21, 1949, was thereupon marked for identification Plaintiff's Exhibit No. 2066;

(Photostatic copy of letter by Pacific Hospital Association to Oregon Physicians' Service, dated June 6, 1949, was thereupon marked for identification Plaintiff's Exhibit No. 2067; and

(Photostatic copy of letter by Oregon Physicians' Service to Pacific Hospital Association, dated May 31, 1949, was thereupon marked for identification Plaintiff's Exhibit No. 2068.)

The Court: Read those at some recess. We will arrange it that way. There is quite a handful there. Go to some other subject, Mr. Marcus.

Mr. Marcus: All right.

Mr. Jaureguy: I will waive the reading of them now if he cares to go ahead.

Mr. Marcus:

Q. Well, Doctor, what is the name of the manager of Pacific Association? A. At the present time C. F.
2057 Wright.

Q. And has he been manager for some time? A. Yes.

Q. Now, Doctor, I want to call your to Exhibit 2067, which is a letter from the manager of the Pacific Hospital Association dated June of last year to the Oregon Physicians' Service and asks, "In response to your letter regarding"—the named patient whom I won't name—"please be advised that I had quite a long talk with Dr."—whom I won't now name—"and he has agreed he will accept your treatment requisition for her case. Will you so advise the patient so that she may send in a new treatment requisition.

"In a way we cannot blame Dr. Haefner too much in this case because some of his bills previously rendered you have been discounted 100 per cent, particularly for

some pilonidal cyst case that he had received prior authorization for and then was paid nothing for services."

Isn't it true, Doctor, that that type of complaint has come to your attention? A. With regard to the commercial hospital associations?

Q. I am talking about OPS. This is in coneection with OPS. A. No, I haven't done very much work for the OPS, and I haven't—I haven't heard very much about it, really.

Q. Well, your association cooperates or is affiliated with OPS, is it not? A. Yes.

2058 Q. Now, you say you have been a member of the Board of Directors. A. Yes. It's been a number of years ago, you know. I haven't been in recent years.

Q. I see you are not on the Board at this time? A. No.

Q. Now, Doctor, I believe you testified that while you were going to medical school you also had a job with National Hospital Association. A. Yes.

Q. That job helped you get through medical school, didn't it? A. Yes, it did.

Q. And to your knowledge was that at that time something which National Hospital Association did with respect to other medical students? A. I think, yes, that is right, they had every year one man who did that, one student, for a period of years.

Q. And then, Doctor, I believe you said something about limited choice of physicians. It is true, is it not, with respect to both those associations that you have mentioned, the Pacific Hospital Association and the Eugene Clinic, that there is also there a limited choice of physicians? A. There is very little barrier to the patient receiving the services from a man in the other group if he so desires. It is very common to have consultation

2059 from the other group in each case, in the case of each organization. Also, quite commonly emergency cases will be taken care of by the men in our group, for instance, and the compensation will be forthcoming from the Eugene Hospital group, and vice versa, so that it is somewhat limited but there is no rigid barrier preventing the patient from receiving services from a man in the other group.

Q. Well, Doctor, how do you reconcile the statement you have just made with this letter written on April 24, 1947, by Mr. Wright to a doctor in Eugene—this is Plaintiff's Exhibit for identification 2044—"Also you should know that we have discontinued the practice of permitting any of our cases to be referred to the Eugene Hospital. We feel

that we have in our own group sufficient specialists to be able to handle all of our cases."

Don't you regard that as a limitation? A. I don't care what that says. As a matter of actual practice there has been a very free exchange, particularly during the war, for example. We didn't have a good orthopedic man in the Sacred—or in the Pacific Hospital Association—and Dr. James Stewart of Eugene Hospital took care of a large number of the patients with fractures and requiring orthopedic work. Dr. Shepard, our eye, ear, nose and throat man, I know on a number of cases has seen Eugene Hospital patients and has been compensated. As an
2060 an actual matter of practice it has been possible for patients to receive advice or service from any other groups.

Q. That has been by special permission? A. I beg your pardon?

Q. That has been by special permission, isn't that so? A. When the patient asks for it, yes. It is usually to try to satisfy the patient.

Q. In most instances, however, the rule is that the subscriber goes to the particular association and is not to go to the other, isn't that so? A. That is, of course, correct. If the patient, however, objects to that doctor he is generally able to get help from the other group by asking for it.

Q. Well, I imagine, Doctor, there must be quite a little of objection before he gets that; otherwise, your association wouldn't amount to much, would it, if every time a patient said "I want to go to this other outfit," yours wouldn't last very long, would it? A. That wouldn't—what you say is not true, no. The men are usually—there are excellent doctors in both groups and there are a few people who are not happy with good medical care regardless of which group it is in. There are very few discontented patients in either group as a rule.

Now, as I say, during the war period we didn't have a good orthopedic man and we were quite free to use
2061 their man, and they sometimes wanted to go over there, and, while we had a limited coverage over the field professionally there hasn't been any discontent among the patients in either group on a large scale. Individually,—

Q. I assume that is so, but isn't it true that when you considered you had a good man you wanted him to go to—

him and not to someone in the Eugene? A. That is right. And he would be happy to go to our man as a rule.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. This letter here that Mr. Marcus read, and the part he read reads, "Also you should know we have discontinued the practice of permitting any of our cases to be referred to the Eugene Hospital"—do you construe that as meaning doctors or a hospital? A. Well, that would be the hospital, of course.

Q. How many hospitals are there in Eugene? A. Two.

Q. One is the Eugene Hospital? A. Yes.

Q And the other is the Sacred Heart? A. Sacred Heart, and the Pacific Hospital Association is made
2062 up largely of staff men of the Sacred Heart Hospital.

Q. And the Eugene Hospital & Clinic partnership is made up of— A. Of men who operate the Eugene Hospital Association.

Mr. Jaureguy: That will be all. Thank you, Doctor.

(Witness excused.)

Mr. Jaureguy: Now we will call Dr. Hunt.

2063 Dr. Charles E. Hunt was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Now, your name is Dr. Charles E. Hunt? A. Yes, sir.

Q. And you are one of the defendants in this case? A. Yes, sir.

Q. You understood that, did you, Doctor? A. Yes.

Q. And where do you live, Doctor? A. Eugene.

Q. And what is your business or profession? A. Well, I specialize in obstetrics and what is known as gynecology, which is women's diseases.

Q. And you have been practicing medicine how long? A. Since 1913.

Q. And where have you been during that period? A. Well, I have been 26 years in Eugene, and before that I was in North Dakota.

Q. And where did you get your medical training? A. Northwestern Medical School of Chicago, Northwestern University in Chicago.

Q. And then did you have some postgraduate
2064 work or internship? A. Yes. I had internship in Minneapolis and postgraduate work later in Chicago and other places.

The Court: Northwestern at Evanston?

A. The medical school is in Chicago, in the city.

The Court: Are there three downtown there

A. The school is down at—

The Court: I say, is that three downtown, Rush and University of Illinois and Northwestern?

A. Yes. There is a fourth one in Chicago now too, Loyola. That would make four.

Mr. Jaureguy:

Q. And are you a member of any medical society? A. Yes, I am.

Q. Would you tell us what you are a member of. A. Well, I am a member of my State Medical Society, the Oregon, the Lane Medical Society, Central Willamette Medical Society, American Medical Association, the Portland Obstetrical and Gynecological Society, and Pacific Northwest Obstetrical and Gynecological Society.

Q. How long have you been a member of those medical societies as distinguished from your specialties? A. Well, I have always been a member of my State and AMA.

Q. Ever since you have been— A. Ever since I have been a doctor, yes, always have.

Q. And have you ever been an officer of any of
2065 those societies? A. Yes. I have. I have been President of the County Society, the Central Willamette, the Oregon State Medical Society, and the Portland Obstetrical Society, President of them all.

Q. And when were you President of the State Society? A. It was the year '40-41. We go in about in the fall, and it is one year.

Q. And were you on the Council of them then? A. Yes. I was on the Council three years—four years before that,

for four years before that; one as President-elect and three as Councilor.

Q. And when were you President of the County Society? A. Of the what?

Q. Of the County Society? A. Oh, my County Society. I couldn't just tell you. It is quite a long time ago, quite a bit prior to the presidency of the State Society, probably six, eight or nine years before that. I don't know the exact year.

Q. Now, have you ever had occasion as far as you know to treat any patients who were members of commercial hospital associations? A. No, I never have.

Q. And why is that? A. Well, they, for one reason, one main reason if no other—one main reason is that they have never covered cases in my field, obstetrics and gynecology, they are never covered. None of them up until the last year or two have ever covered that. So,
2066 of course, I wouldn't be eligible providing I wanted to otherwise.

Q. I suppose up to last year that is sufficient reason then. A. That is sufficient reason. Even if I wanted to, they never covered that particular field until the last couple of years.

Q. And in the last couple of years have you had any patients come to you that were members of these hospital associations? A. Of the National?

Q. Of any, National, Industrial, Prudential— A. No, I haven't, no.

Q. Well, I just want to ask you this general question before I forget about it. Have the rest of these defendants—you are just one of the defendants—but have the rest of them, including the medical societies, subjected you to compulsion, coercion, harassments or threats so you couldn't practice medicine the way you wanted to? A. Not that I ever suspected, no.

Q. So that I take it you have never had the question presented to you whether you would accept a ticket of a hospital association. A. No, I never had. I haven't been interested in it at all in any way except theoretically.

The Court: How did you get in this case?

A. That is what I'd like to know. I don't know.

Mr. Jaureguy:

2067 Q. You will find out on cross examination. A. I will probably find out.

Q. You will find out in a few moments. Well, now, you were on the Council of the State Society, I think you said? A. Yes. I was on the Council for three years.

Q. And that was in 19—the fall of '37 to the fall of '41? A. Well, you see, we go in as President-elect for one year before we are President, so I was President-elect in '39 and '40, President in '40 and '41, and Past President on the Council '41 and '42, and then I went off. Prior to all that I was a Counselor three years.

Q. Well, now, when you were on the Council was there any discussion there about anything connected with commercial hospital associations? A. Well, there was a lot of talk, yes, about contract practice.

Q. What was the nature of the talk? A. The main phase was the ethics of it.

Q. And how did that involve ethics? A. Well, the practices at that time in the contract practice was considered to be unethical and some of the things that were done.

Q. What were some of those as discussed in the meetings? A. Well, not allowing a free choice of physician, not allowing a doctor to do the things he thought best, prescribe and do the things that needed to be done, and not allowing certain drugs and things he thought were needed, putting the price so low that you couldn't
2068 do good work, adequate work, a good many of those things.

Q. Did that discussion take place at many meetings or just occasionally? A. It seems when I was President every meeting those things came up and took a good deal of our time. I would think my year as President was pretty much a year of discussing ethics, medical ethics pretty much.

Q. And do you remember at one time inviting Mr. Bechtold to appear before the Council and explain his contracts? A. I think so, yes. I think he was invited and came in. I think he did.

Q. And was he received courteously there? A. Yes, yes indeed.

Q. Now, in addition to the ethics of the commercial hospital associations was there discussion of ethics of doctor-sponsored— A. There certainly was, yes. It was all in the same category, yes. We discussed ethics wherever it was.

Q. Do you recall that in 1936 there was an article in this little pocket publication that the Medical Society put out called the "Reporter", headed "In an Oregon Town", and

you kind of read between the lines and decided they were talking about Eugene? A. Yes, I remember it.

2069 Q. And do you remember mentioning at the Medical Society—do you remember what that discussion was? A. Well, I have refreshed my memory since, lately, but I wouldn't have remembered it. But I do remember it, yes. I remember the pamphlet that was published and I remember it discussed a lot of these things, yes.

Q. And you rather complained, I think. A. What do you say?

Q. You rather criticized the article at one of those meetings? A. I think I did. I thought it was extreme and not well taken. It was a pretty critical thing. I didn't think it would bear much fruit because it was a pretty critical thing.

Q. Did you have any thing to do with the organization of OPS? A. No, nothing.

Q. Are you one of the OPS cooperating physicians? A. Well, I am now, the last couple of years.

Q. Have you had occasion to treat OPS patients? A. No—oh, I would say one or two very minor cases in the last two years. Almost nothing. I merely went into it more or less to give it my support. I was asked in it as a member of the State Society and went into it more or less to give them my support. It really has meant nothing to me personally so far. I think now that obstetrics is included that it may to some extent.

2070 Q. Do you have any views as to whether you think OPS ought to be a monopoly in the field of prepaid medical care? A. No, I don't think it should, I don't think it should. I don't like a monopoly in anything, even in the hospital and other places. I don't like monopoly anywhere. I think our competitive system, if there are some ethics wrapped up in it and if it is above-board and ethical, is what makes us what we are. I believe in competition. I wouldn't want to see OPS a monopoly.

Q. You have no objection to commercial hospital associations if they don't handle things the way they did back in the thirties, is that the idea? A. I have no objection to hospital associations if they are ethical and if the practices are good.

Q. Have you had occasion to observe their practices the last few years or study them or anything? A. You mean the OPS or others?

Q. No, the commercial hospital associations. A. I don't have any contact much with them. I don't know much about it. I don't care much about it and I am sure that if they weren't pretty smooth and pretty good I would hear about it, because we don't hear it discussed any more.

Q. About how long has it been since it was ever discussed—I mean aside from this lawsuit, of course? A. Oh, before the war. We weren't discussing these things much even back before the war. We don't hear much of it nowadays.

2071 Q. Now, are you a member of either of the doctors' prepaid care plans in Eugene, that is Eugene Hospital & Clinic or Pacific Hospital Association? A. Well, I haven't been, but I have been invited into the Pacific and I have told them I would join, but I haven't signed yet, although I think I will.

Q. Are you on the staff of one of the hospitals there? A. I am on the staff of Sacred Heart.

Q. Staff of Sacred Heart. That is the one that takes care of the members of Pacific Hospital Association? A. Yes, it takes care of all of them, I think.

Q. Do they have obstetrics in the Pacific contract? A. They do now, just recently.

Q. Just the last year or so? A. I think just the last year, just recently. They don't do much of it.

Q. So there wouldn't have been any object in your belonging? A. No, there wasn't. That is the reason I didn't go in. I wanted to cooperate with the men that were in it but there was no reason for me being in it. That is the only reason perhaps in the eight years that I didn't go into it.

Q. Now, you have been charged here as a member of a conspiracy that was out to destroy commercial hospital plans. Have you ever been conscious of ever being a member of any such conspiracy? A. No.

2072 Q. Have you ever either individually or in concert with others ever tried to induce hospitals not to let doctors on their staff if they had any connection with commercial hospital plans? A. Surely not.

Q. Or to either individually or in combination with others to prevent patients from being admitted to hospitals if they were members of hospital plans? A. Nothing of that kind, never gave it a thought.

Q. Or have you ever conspired with others or worked with others to try to prevent doctors who were not on the staffs of commercial hospital associations, for them not

to consult with doctors that were? A. No, I have never been interested in this subject, never had anything to do with it. My whole work in the medical societies was to improve the ethics and improve medical practice in general and for the welfare of the public. That is the only interest I ever had.

Q. Did you in 1937 write a letter to Prudential and National telling them that you wouldn't take their patients? A. I have seen a photostatic copy of it so I guess I did. I had forgotten it. I couldn't have said that I wouldn't work for them any more, because I never did, but I apparently did write them and say I would not work for them.

Q. Yes. A. I don't remember it, but I think it is true that I wrote them, yes.

2073 Q. Yes. Well, I think we will give you an opportunity now to find out why you are a defendant. A. Yes.

Mr. Marcus: Your Honor, I am going to have to ask—I am going to start cross examination—but I am going to have to ask if your Honor will have this witness held over the recess, because yesterday evening Mr. Jaureguy advised us of who the witnesses were going to be today and this gentleman was not on that list.

Mr. Jaureguy: I would like to explain for a moment that we didn't know yesterday he would be here before this evening, and as soon as we knew he was going to be here we told them. That was only at 2:00 o'clock today.

Mr. Marcus: No one told me today until he was called.

Mr. Jaureguy: I want to be sure with Mr. Marcus and the Court that if I advise whichever of the counsel that happened to be here—

Mr. Marcus: Yes.

Mr. Jaureguy: I thought you were criticizing me for not saying it to you personally.

Mr. Marcus: It certainly wasn't brought to my attention.

Mr. Jaureguy: I am not to blame for that.

Mr. Marcus: Did you notify them after the resumption of the proceedings this afternoon; because certainly at the time I came down here I did not know it, and I

2074 have been talking to my colleagues and I assumed they did not know.

Mr. Jaureguy: I didn't know until twenty-five minutes to two, and the moment any counsel for the plaintiffs came in—I wouldn't say the moment, I say within a very few

moments—I notified Mr. Cohen and he immediately notified Mr. Galassi.

I will say, if I may, that I am giving them much more information regarding our witnesses than they ever gave me regarding their witnesses.

Mr. Marcus: Well, again for the record, any time that Mr. Jaureguy asked we gave him the names of the witnesses. I don't want to get into personalities, but it is just merely a matter of mistake, perhaps.

The Court: I wouldn't mind a few personalities today.

Cross Examination

By Mr. Marcus:

Q. Well, Doctor, we will start anyway. You said that you had no concern about hospital associations, you never treated their patients because you were in this specialty, you weren't interested in this business of tickets or anything of that sort, didn't you? A. I said except theoretically. Personally I wasn't.

Q. Theoretically? A. Personally I wasn't.

2075 Q. You weren't personally concerned? A. I was from the standpoint of medical service and standpoint of the medical societies and my colleagues, but not personally.

Q. So it was on the standpoint of the medical society that you wrote these letters telling these hospital associations that you would not deal with them, is that not so? A. Was there more than one letter?

Q. I am asking you a question, Doctor. Do I have to show you documents before you can answer a question? A. I didn't write in behalf of the medical society. I wrote them on my own behalf.

Q. You wrote them on your own behalf? A. Yes.

Q. All by yourself? A. Well, nobody told me to write them.

Q. You didn't consult with anyone? A. Nobody told me to write them.

Q. And you didn't think it was part of the medical society policy? A. I don't think so.

Q. Your answer is No? A. Well, I don't think so.

Q. Well, you ought to know, Doctor. A. You asked me what, now, was it a part of—

Q. This is one of your letters that apparently 2076 has never been marked in evidence, so I better have this marked.

(Photostatic copy of letter by Dr. Charles E. Hunt to Industrial Hospital Association, dated November 12, 1937, was thereupon marked for identification Plaintiff's Exhibit No. 2069.)

Mr. Marcus:

Q. I show you Exhibit marked for identification 2069, which is a letter from you to the Industrial Hospital Association stating that you are declining to care for patients covered by hospital association tickets. I want to show it to you.

Doctor, you didn't just sit down and dream that up, did you? You had something in mind when you wrote these letters, did you not? A. Well, there must have been some reason for writing it, I suppose.

Q. And the reason was because that was medical society policy, was it not? You just said you never had any dealings with these associations. A. I don't know that it was. That is ten years ago, isn't it?

Q. Yes, 1937. A. That is thirteen years ago. I can't remember that detail that long.

Q. Can't remember it? A. No.

2077 Q. Do you remember that that was the period of time when the Lane County Medical Society was taking action to have their doctors not associate with the hospital associations? A. I don't connect that up. There has been so much time go by since that that I don't remember just what went on.

Q. You wouldn't say No, though? A. What?

Q. You wouldn't be prepared to say No to that question, would you? A. I don't think you can answer every question Yes or No.

Q. Well, let's read the question. Maybe we can see whether it is the type of question that can't be answered Yes or No.

(The following questions read: "Do you remember that that was the period of time when the Lane County Medical Society was taking action to have their doctors not associate with the hospital associations?" and "You wouldn't say No, though?")

A. My answer is No.

Q. You don't remember? A. I don't remember, no.

Q. You have got a very good memory, though, Doctor, about the time when you were President of the society and

having all these discussions about what was going on with the hospital associations. A. I think you can remember some things and not others.

Q. Well, that is a convenient sort of thing, isn't it, 2078 Doctor? A. Not necessarily.

The Court: Recess.

(Short recess.)

Mr. Marcus:

Q. Now, Doctor, I would like to test your memory a little. A. All right.

Q. Do you recall whether or not you were a member of the Council of the State Medical Society in 1936? A. Yes, I was a member then.

Q. You do remember that? A. Sure.

Q. Do you recall whether you were a member of the Council of the State Medical Society in 1937? A. As I testified, I was a member for all together five years, six years.

Q. Starting about when? A. Well, ending in '42. It was starting six years before that.

Q. I see. Were you a member of the Committee on was on Medical Economics? A. Oh, I don't remember. I was on the Executive Committe for a number of years, and I think when I was President we organized our Bureau of Medical Economics, I believe. I imagine I was on it.

Q. Well, Doctor, you can hardly call yourself a by-stander, can you— A. Oh, no.

2079 Q. —in these attempts by the defendants to get the doctors not to associate themselves with the hospital associations? A. I wasn't a by-stander.

Q. In fact, you played an active part, didn't you? A. Well, I was an officer, if that is what you mean. I was an officer.

Q. I am asking you the question, didn't you play an active part in that? A. As an officer of the Society, yes.

Q. You did play an active part, didn't you? A. Well, what is your question, now?

Q. Read the question.

(The following questions were read: "Well, Doctor, you can hardly call yourself a by-stander, can you, in these attempts by the defendants to get the doctors not to associate themselves with the hospital associations?" and "In fact, you played an active part, didn't you?")

Mr. Marcus:

Q. The question is, didn't you play an active part in getting the Society to do these things, getting the defendants to do these things? A. To do what things?

Q. To keep the doctors from associating themselves, deter the doctors from associating themselves with
2080 these hospital associations? A. I didn't do anything to keep them from associating with them. We tried to clean up the thing and make it ethical. We didn't try to stop them from associating with them.

Q. I am asking about you yourself. I think your memory about what you did is probably better than— A. Well, my answer is No.

Q. Your answer is No? A. Yes.

Q. Now, Doctor, I read from Exhibit 296. That is the minutes of the April, 1936 meeting of the Council of the Oregon State Medical society:

"A letter from Dr. Hunt, Counselor for the Third District, to Dr. Watts requesting that as a representative of the Council he address a meeting of the Central Willamette Medical Society at Eugene on Thursday, April 2nd, to which all members of the State Society in the Third District had been invited, on the subject of unethical contract practice was read. Dr. Watts states that he had accepted Dr. Hunt's invitation."

You were in a hurry to get some action done, weren't you, Doctor? A. I don't know as I was in a hurry.

Q. Well, you didn't just sit by, you yourself sent a letter. You wanted someone to come down there and tell the doctors in your area that they better get good?
2081 A. It was an educational matter. We had other speakers around the state. That was an educational matter. We were trying to each some ethics.

Q. And you didn't mind how you went about teaching them ethics? A. Oh, yes, we did.

Q. As long as you taught them ethics? A. Oh, yes, I—

Q. And you were a member of the Council at the time that all these disciplinary proceedings were had, and that was quite all right with you, wasn't it? A. What disciplinary measures?

Q. I am asking you a question—

Mr. Jaureguy: I object to the question on the ground it assumes something to which this witness has not testified.

The Court: Ask it again.

Mr. Marcus:

Q. Are you aware, or is your memory failing you, that during the period 1936 to 1940 when, as I understand you to have testified you were on the Council, that disciplinary proceedings were had with respect to Multnomah County Medical Society members? A. I heard about that at the time, yes. I knew about that at the time.

Q. There was no question that they learned their ethics that way, didn't they, the doctors involved in those proceedings?

Now, Doctor, I call your attention to Exhibit 313,
2082 minutes of June 26, 1937, of the Council of the Oregon State Medical Society. "A letter from Charles E. Hunt, Councilor for the Third District"—you wrote quite a number of letters in those days, didn't you, Doctor? A. I didn't remember I had, but it seems I wrote some of them.

Q. Well, they have a habit of coming back to haunt you, don't they? A. I don't think I wrote as many as some of them.

Q. I have no doubt some of them wrote more than you did.

"A letter from Charles E. Hunt, Councilor for the Third District, was read. Dr. Hunt expressed regret that he was unable to attend the meeting and outlined the results of the efforts of the Benton County Medical Society and the Lane County Medical Society to eliminate unethical contract practice. He further pointed out in the letter that progress was being made in eradicating undesirable practices in Polk and Marion Counties and that Central Willamette Medical Society was also working on the problem. Dr. Hunt predicted that all unethical contract practice would be eliminated from his entire district by January 1, 1938."

Now, Doctor, what did your district consist of? A. That is four counties. That is Lane and Lincoln—let's see—and Benton, and I don't recall the other county, right in there, four counties altogether.

2083 Q. Well, just as a matter of information, do I understand a Councilor has a certain area which he is supposed to cover which may be more than a single county? A. Yes. It is a district.

Q. Now, Doctor, you stated you have just recently decided to go in with the Pacific Hospital Association and

you never had any contact with them before, is that right? A. Yes, that is right. I wouldn't say "any contact" with them. I lived in the town where they worked, but I never belonged to them. I know about them.

Q. Well, Doctor, I call your attention to the minutes of the meeting of the Council of Oregon State Medical Society for October 9, 1937, Exhibit 314. "Dr. Hunt stated" —apparently this time you were actually present.

"Dr. Hunt stated that the Pacific Hospital Association of Eugene was prepared to send in their complete questionnaires covering 170 contracts, but that the Eugene Clinic & Hospital wished to have the questionnaires simplified."

I gather even at that time you were observing what those hospital associations were doing and checking what they were doing, isn't that so? A. Why, yes, we were, sure. We were observing what all the doctors were doing, what all these organizations were doing as to their ethics of the thing, the type of service. I think that is our function. I don't see anything wrong about that.

2084 Q. Well, Doctor, I gather that you don't see anything wrong in anything that has happened, do you? A. I don't say that at all.

Q. You don't see anything wrong in enforcing medical ethics as they were enforced, isn't that so? A. Enforcing—we were teaching them.

Q. Well, I supose one way of teaching them is enforcing them, isn't that so? A. I am not apologizing for working toward medical ethics.

Q. You are not apologizing for what happened and your part in it? A. I didn't have anything to do with a lot of things that happened.

Q. Well, you are not apologizing for the part you played in this? A. I am not apologizing for any part I played, make that definite.

Q. That is right. A. Yes, sir.

Q. Now, Doctor, I believe on direct examination you said you were all for competition and against monopolies, isn't that so? A. Was what?

Q. On direct examination I believe you said you were all for competition and against monopolies, isn't that so? A. Yes, in general.

2085 Q. But there are exceptions, aren't there? A. I don't know as there are. Might be. I qualified that

and said "providing it is ethical and some rules, and properly"—

Q. Well, I assume therefore that you make a reservation. A. No, it is not a reservation.

Q. Well, if competition doesn't accord with medical ethics then competition is bad, isn't it? A. No.

Q. You don't think so or do you? A. I didn't get that too well.

Q. I say, you don't believe that where medical ethics conflicts with competition that competition should prevail, do you? A. I don't know if I understand just what your question is.

Q. Well, we were discussing whether or not you liked the idea of competition and were against monopolies, and then when I questioned you a little you said there might be some exceptions to your liking of competition and monopoly, and I am trying to see where those exceptions are, and that is why I am asking you now, in so far as it might happen that competition would conflict with medical ethics you don't believe that competition should be preferred?

The Court: The legal profession is one exception. That is a monopoly.

Mr. Marcus: That is a licensed monopoly.

The Court: Monopoly, nevertheless.

2086 A. I don't think I am competent to answer that question. I don't know really what you are talking about.

Mr. Marcus:

Q. Anyway, you are sure that you like competition? A. Well, you can note what I said there before if you like.

Q. Well, let's see what you said. In Exhibit 889, which is a letter from you dated May 4, 1940, to Dr. Pelkington, you said:

"It seems to me the greatest hurdle to overcome is the fact that you are operating statewide and in competition to approved local bureaus. This is the thing we are trying to overcome. The fact that your organization is physician-owned, gives free choice of physicians, and pays good fees are all steps in the right direction, but it seems to me that the Society cannot approve competing organizations throughout the state even if they are physician-owned."

Now, that illustrates your liking for competition, doesn't it, Doctor?

I gather you would rather not answer that question.

Doctor, have you ever been a delegate to the AMA? A. No.

Q. Your official positions then have been confined to the State Medical Society, the Lane County Medical Society, and being a Councilor for that district? A. And my specialty societies.

Q. Well, how about Central Willamette Medical
2087 Society? A. Yes.

Q. You have been a member of that? A. Yes, the Lane County, the District, which is Central Willamette, the State, and the AMA, and then my specialty societies.

Q. Well, how long have you been a member of the Central Willamette? A. Oh, I think always since I have been here, I think the whole time, about twenty-five years.

Q. Have you ever been an officer of that Society? A. Yes, I have been Secretary twice and President once.

Q. And would that have been since January, 1936? A. '36? Oh, I might have been President of it after that. I was Secretary two different times and then later President. It's quite awhile ago. I don't know the exact date.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. Is this medical ethics you are talking about something that is supposed to be merely good for the doctor, or is it supposed to have some bearing on the public interest? A. Well, medical ethics come down first from the time of Hippocrates because of the fact that the relationship between a doctor and patient is a matter of life and
2088 death and confidences and it is a very important thing that we have ethics, so we have developed for a long, long time certain codes of ethics, which from time to time are revised in order to bring them up to date, and we all abide by them, or are supposed to, the same as other organizations, legal and others, but ours is a very ancient code and it is a very important one.

The Court: What is in the oath, any reference to ethics?

A. The oath of Hippocrates?

The Court: Yes.

A. Oh, I am sorry, I couldn't quote it. It is quite long.

The Court: Is there a reference to ethics in it?

A. Beg pardon?

The Court: Is there a reference to ethics in it?

A. Well, I think so. I don't know if they use the word, but it is relationship to your patient and to your other physicians and to the public, so I imagine so.

The Court: What stage in his profession does a physician take that oath?

A. Well, I don't think they actually take it now. I don't believe they do. I don't believe they do take it anymore.

The Court: They did at one time?

A. Yes, in ancient times.

The Court: Not in modern times?

A. No, I don't think in modern times they take it. We all subscribe to the code of ethics, the principles of
2089 ethics of the American Medical Association. There is a new edition just out.

Mr. Jaureguy:

Q. Do you regard this code of ethics primarily for the benefit of the doctors or primarily for the benefit of the patients? A. For the benefit of the patient. It is also a benefit to the doctor, but is primarily for the patient.

Mr. Jaureguy: That is all.

Recross Examination

By Mr. Marcus:

Q. Doctor, this code of ethics is generally incorporated in the constitution of the State Society and local County Societies, is it not? A. Yes, it comes on down, right down to the local societies. It is pretty well understood by—medical students are given it in school and it is pretty well understood, I think.

Q. Well, for some time the American Medical Association has had these principles of ethics and they have been incorporated in the State Constitution? A. Yes

Q. And local constitutions? A. Yes. In our hospital membership and many other things we subscribe to the code of ethics of the American Medical Association, and

so it is pretty well understood, and it is just revised
2090 now to take in some of these later things about this very thing, contract practice, group practice and prepaid medicine. It has taken that in now, and so it changes. And what I thought in '36, we have all changed and grown in our attitudes since that time, and now we are in a business that at one time we criticized very severely.

Q. You are not, though? A. Personally I am not—yes, I can say I am in it now. I am in the OPS and probably will have it cover my specialty, so I really am now.

Mr. Marcus: That is all.

The Court: Are ethics taught to the medical students in medical schools?

A. Pardon?

The Court: Are ethics taught to the medical students in medical schools?

A. I think the code of ethics in presented to all medical students at all medical schools. I would be sure it is.

The Court: That is all, Doctor.

Redirect Examination

By Mr. Jaureguy:

Q. I gather from the statement, the last answer you gave to Mr. Marcus, that the view of the medical societies with respect to prepaid medical care has shifted and changed quite a lot in the last ten or fifteen years.
2091 A. They have, definitely. We are not advocating prepaid medicine nationally.

Q. And in the days when you were on the Council of the State Society, at least the start of that time— A. It was considered unethical. The best men in the society didn't do it and were very much opposed to it, and they have changed, but it's been cleaned up, it's been improved.

Recross Examination

By Mr. Marcus:

Q. Well, Doctor, it is true that even back in 1936 as far as doctor-sponsored plans were concerned, they were approved by the societies as long as they conformed to what the society thought was proper medical ethics, isn't that so? A. At times.

2092 Q. That is right. And even now with respect to this trend the trend has been with respect to ap-

proving doctor-sponsored plans, isn't that so? A. Yes. I think our plans have helped improve the others and the whole thing is improved. That is why we don't hear so much about it. It is improved.

Redirect Examination

By Mr. Jaureguy:

Q. Well, when you were on the Council do you know whether the American Medical Association approved even doctor-sponsored plans? A. I don't believe at that time they did. I don't believe they did at that time.

Recross Examination

By Mr. Marcus:

Q. Doctor, since you made that statement, you have no reason to believe, have you, that during that period the American Medical Association disapproved those doctor-sponsored plans? A. That they did at that time?

Q. Well, during this period, we will say take any time between 1936 and 1949. A. Well, I know at first that they didn't and then they started making a study of it and there began to be experimental plans all over the country,
2093 and they had an economics bureau and were studying it and finally they did approve certain plans.

Q. But you actually don't know whether they disapproved doctor-sponsored plans? A. Well, they disapproved the type of plans we had in Oregon at that time. I know that.

Q. How do you know it, Doctor? A. How do I know it?

Q. Yes. A. Well, I suppose—I didn't talk to them, so I must have gotten it either from their journals or else from doctors individually or something. I don't know.

Q. Did they contact the Society with respect to Multnomah Medical Service Bureau? A. They have always had a Bureau of Economics, and for purposes of consultation and information we can write in, go in, and contact them, and I suppose we got our information that way.

Q. And did they complain to you about the Multnomah Medical Service Bureau? A. They never complained to me about it, no.

Q. And, as far as you know, they never complained to the Society? A. I doubt it; I doubt it.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

2094 Mr. Jaureguy: Dr. Margason.

DR. MERL L. MARGASON was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Will you give us your name? A. Merl L. Margason.
Q. Where do you live? A. Portland.
Q. What is your business or profession? A. Physician.
Q. How long have you been a physician? A. Since 1923.
Q. Practicing in Portland all that time? A. Yes, sir.
Q. And what medical school did you attend? A. The University of Oregon Medical School.
Q. And you had postgraduate or intern training? A. Yes, sir.
Q. And where was that? A. I had intern training at Emanuel Hospital, and I have had numerous postgraduate courses over the country, too numerous to remember—I can remember some of them.

2095 Q. I won't ask you to give that, but I will note that you haven't been so long out of medical school as Dr. Hunt and I wonder if you could give us a little more of the details of the Oath of Hippocrates.

Mr. Marcus: Well, your Honor, with all due respect to the fact that issue has been brought into the case, I want to object to going into it simply because it is irrelevant.

The Court: You may answer, Doctor.

A. Answer?

The Court: Yes.

A. The Oath of Hippocrates—I can't quote it—I swore to the Oath of Hippocrates, and in which the Oath of Hippocrates laid down certain rules governing the practitioners of the medical art at that time as in regard to their conduct, one of which was that no man shall give poison to a patient; another one of which was that no doctor shall cut for stone, which apparently was cutting for a bladder stone or something of that sort; another was that no doctor because of his position should take advantage of any woman that he might be treating. Mainly these rules or this Oath of Hippocrates was ruled to protect patients.

It was a rule of conduct of a physician in his professional capacity. There is nothing in this oath that I can recall referring to ethics. It was a code of rules.

The Court: Those things you have just related
2096 are ethical in their nature.

A. Indeed they are; yes, sir.

Mr. Jaureguy:

Q. You mean the word "ethics" was not used, is that what you meant? A. That is right, the word itself.

Q. But do you regard the Code of Ethics as primarily for the benefit of doctors or primarily for the benefit of patients? A. Primarily for the benefit of patients.

Q. Now, have you belonged to any medical societies? A. Yes, sir.

Q. And what societies have you belonged to? A. I belong to the American Medical Association, the American College of Physicians, the Multnomah County Medical Society, the Pacific Northwest Society of Internal Medicine, the Pacific Northwest Society of Neurology and Psychiatry, and numerous local societies of a similar character.

Q. Have you been an officer or on the Council of either the Multnomah County Medical Society or the State Medical Society? A. I have been an officer in the Multnomah County Medical Society.

Q. And what has that covered? A. That is a component—

Q. I mean, what office have you held? A. I have been on the Council for several years. I was Vice-President and President.

2097 Q. Could you tell us about how many years that covers? A. I think, if my memory is correct, I served three terms on the Council, which are three-year terms. As President-elect I was on the Council last year. I think it is about ten years, perhaps.

Q. And at the present time your office is what? A. President of the Multnomah County Medical Society.

Q. President of the Multnomoh County Medical Society? A. Yes, sir.

Q. Now, during the last, oh, nine years, say, has there been, have there been any proposals on the Council of the Multnomah County Medical Society to endeavor to prevent doctors from taking tickets or otherwise cooperating with commercial hospital associations?

Mr. Marcus: Your Honor, I would like to have this witness admonished that he is supposed to recite only what he himself knows.

The Court: I am sure he understands that.

A. In my memory and my service on the Council of this Society I have never remembered hearing anyone suggest that anybody be asked to not take tickets for any organization.

Mr. Jaureguy:

Q. Well, have you to your knowledge, you and other members of the Council, known that there are many doctors in Multnomah County that do take tickets? A. Oh, yes.

2098 Q. Now, are you practicing alone or in association with other doctors? A. In association with other doctors.

Q. And what is the name of your organization or partnership? A. The Portland Clinic.

Q. And that is a partnership, is it? A. Yes, sir.

Q. And how many doctors are there in that clinic? A. Twenty-three.

Q. Twenty-three. You have been in Portland Clinic for how long? A. Twenty-five years and seven months.

Q. Now, has the Portland Clinic ever taken tickets of commercial hospital associations? A. No, sir.

Q. Has it ever been on a list of cooperating physicians of OPS? A. Yes, sir.

Q. And is it now on that list? A. No, sir.

Q. And will you explain why it is no longer on the list? A. Because it was very difficult in our organization to follow the rules and regulations laid down in the policies sold to these people for their insurance. Patients would come in and have extensive examinations done and not tell us what they were in there for or that they were a part of this organization, and we found it from an adminis-

2099 trative point impossible, practically impossible to carry out. It wasn't because of any dissatisfaction with the organization. It was because of our own setup it was impractical. It made so much paper work and one thing and another that I think the association felt that they would be better off without us.

Q. And then the examination that you gave, oh, what did that involve? I mean by services of doctors and time and things of that type. A. A routine examination in our

office entails an expense to the patient of in the neighborhood of $30 or $35, as a rule, possibly less, depending upon laboratory tests that might be ordered, and they are ordered according to their indication. The allowance for the examination in this insurance policy was very much less.

Q. And what is the reason why your clinic doesn't take the tickets of commercial hospital associations? A. It has been our policy not to let anyone interfere between ourselves and our patients if it were possible. We have examined patients for the Industrial and National Hospital Associations and various other lay hospital organizations, cases which were referred, and in which case our bills were rendered to the patient and we looked to the patient to pay their bill. How they got their money was not our business,
but we never dealt or accepted the tickets from the
2100 association.

Q. Well, have you given the patients itemized statements when they requested it? A. Yes, sir.

Q. Or filled out forms that were necessary? A. Yes, sir.

Q. Does that apply to all insurance companies? A. Yes, sir.

Q. Do you treat those patients that you get from those commercial hospital associations, do you treat them in the same manner in which you do members of OPS and private patients? A. Yes, sir.

Q. Oh, yes; has your clinic got any arrangement with any railroad to take care of the employes of the railroad? A. We take care of the employes of the S. P. & S. Railroad.

Q. And how long have you been doing that? A. About three years, I believe. My memory is not accurate on that. I believe it is about three years, three or four years.

Q. Well, have you, or, as far as you know, any of the members of your clinic ever been admonished or coerced by and medical society on account of taking care of the railroad's employes? A. I have not and I know of no such instance among our group.

Mr. Jaureguy: You may take the witness.

2101 Cross Examination

By Mr. Marcus:

Q. Doctor, I have here a letter of February 5, 1946, Exhibit 17, from the Portland Clinic to a Mrs. Laura Hoffman.

"We are not connected in any way with the National Hospital Association and because of a ruling of the Medical Society are not permitted to fill out their blanks. How-

ever, enclosed is a statement which you may give them if you wish."

A. May I see that?

Q. Yes. A. If you are going to ask me a question about it I want to see it.

Q. That is the reason, Doctor, that your clinic wouldn't deal with these hospital associations? A. No, sir.

Q. As far as the patients were concerned, isn't it? A. No, sir.

Q. You don't think the clinic meant what it said? A. The clinic didn't write that.

Q. It is on the clinic's letterhead and was written by Dr. Joyce, wasn't it? A. Yes, sir.

Q. Are you disavowing now what Dr. Joyce wrote on behalf of the clinic? A. No, but he is a dead man
2102 and I can't quote him, or I can't question him.

Q. Well, the point is, he is being quoted right there. You disagree with what is said there, do you? A. Yes.

Q. This was the same year you were appointed to the Board of Censors of the Multnomah County Medical Society, isn't it, 1946? A. I don't know that I was on the Board of Censors.

Q. You don't know whether you were on the Board of Censors? A. No, sir.

Q. You don't happen to have the same type of memory Dr. Hunt has, do you? A. I don't know.

Q. Well, I call your attention, Doctor, to Exhibit 203, Multnomah County Medical Society, Board of Censors, 1946. Merl L. Margason. Does that refresh your recollection? A. Well, that is my name, sir, and I was perhaps on the committee if that says so.

Q. Now, Doctor, you testified you were never coerced, isn't that so? A. Yes, sir.

Q. You were one of the coercers, weren't you? A. No, sir.

Q. You were on the Council, weren't you? A.
2103 Yes, sir.

Q. During this period when they were bringing disciplinary proceedings? A. Yes, sir.

Q. And, in fact, you were actually present at one of the hearings when one of these doctors involved in the disciplinary proceedings was kicked out of the Society, isn't that so? A. I don't know. I may have been.

Q. You don't remember? A. I don't remember being present at the meeting. What meeting?

Q. I am talking about a hearing, Doctor. You don't remember? It might have been you were present, isn't that so? A. It might have been I was present. I was present at some meetings when these things were discussed.

Q. And you were never present at an actual hearing, were you? A. I don't know. I don't remember that.

Q. Well, Doctor, I have been spending the best part of the day refreshing recollections— A. Good.

Q. —I might as well try to refresh yours. I show you Exhibit 1948 and ask you to look at Page 2 of that exhibit. A. The next page of this is Page 2?

Q. Well, it is after the cover page, Doctor. There is a cover page and it is the next page. I just asked you to look at that one page, Doctor.

2104 A. All right, sir.

Q. Does that refresh your recollection as to whether you were present at one of these hearings? A. I was undoubtedly present, as I was recorded as present at that meeting. It would be very difficult for me to remember a particular meeting in '36.

Q. Now, Doctor, you have been a member of several committees of the Multnomah County Medical Society, too, haven't you? A. Yes, sir.

Q. And you took an active part in getting the Society to take action against these doctors, didn't you? A. Not particular, no.

Q. Not particular, no? Well, Doctor, I am reading from Exhibit 1345, Multnomah County Medical Society, March 28, 1936, a statement:

"The Council of the Multnomah County Medical Society announces its determined opposition to all contract practice not in harmony with the policies, rulings and code of ethics of the American Medical Association. We believe that our attitude is for the best interests of the medical profession and the public welfare. We therefore call upon our membership engaged in these groups as active members or as consultants to sever their connection with all such forms of practice. We are pledged to the support of the code

2105 of ethics of our National and State organizations and therefore urge all Society members approving this request to sign the questionnaire which is being mailed to them."

Now, one of the signatures is "Merl Margason." Does that refresh your recollection? A. May I see that,

2106 please? This is simply a list of the Councilors here. My signature is not on there. I was a Councilor—

Q. Do I have to show you in every instance a piece of paper before you are willing to make answer?

Mr. Jaureguy: I want to object to that. The witness has a right at any time to ask for a piece of paper that the lawyer is reading from.

Mr. Marcus: I am merely asking a question.

Mr. Jaureguy: I ask your Honor for a ruling, please.

The Court: There is no necessity to rule. He can see them all.

A. Very well. Good, your Honor.

Mr. Marcus:

Q. Doctor, do you recall being present at a meeting of the Council of the Multnomah Medical Society which approved the decision of the Board of Censors with respect to Dr. Moore? A. Well, I do not remember these individual meetings. I have been to so many of these meetings I can't recall any specific meeting. I recall these problems when they came up and the discussions that went on.

Q. You were a member of the Council, a part of the Council at that time? A. Yes, and I was quite aware of what was going on. I have the same feeling anyhow about the conduct of every man in my profession that I have about the men with whom I am associated, that we
2107 should deal with our patients and not have someone from the outside, who is uninterested, except from a monetary standpoint, dictate to us what we should or should not do, and that was the objection to some of the practices that were going on at the time.

Q. And you meant to see to it that something was done with respect to those doctors who were associating themselves with these hospital associations, isn't that true? A. No. I think we have the right, even with men we are working with and men in our organization, to criticize their behavior, if we so feel like doing it, if we feel they are wrong.

Q. Even to the extent of throwing them out of the Society? A. Were they thrown out of the Society, these men?

Q. I just referred to the name of Dr. Moore. I suppose you are acquainted with him.

The Court: He resigned.

A. He resigned.

Mr. Marcus: After the Board of Censors had voted to expel him.

The Court: They gave him a chance to resign.

Mr. Marcus:

Q. Well, I am asking you a question, Doctor: In all of these activities of the Medical Society with respect to disciplining the doctors who, for some reason or other, wanted to continue to be associated with these hospital associations, you played an active part didn't you? A. Yes, sir.

2108 Q. Doctor, I didn't get whether you have been an officer of the State Medical Society? A. No, I have not.

Q. Have you ever been a member of the Council of that Society? A. No.

Q. Have you ever been a delegate from the Multnomah County Medical Society? A. Yes, sir.

Q. Could you tell us the approximate time? A. I was a delegate last year.

Q. Any time prior to that? A. Not that I remember.

Q. You have been on some of the committees of the State Medical Society during this period? A. Yes, sir.

Q. Have you not? A. Yes, sir.

Mr. Marcus: That is all, Doctor.

Mr. Jaureguy: That is all.

(Witness excused.)

2109 Dr. JOHN H. BESSON, one of the Defendants herein, produced as a witness on behalf of Defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is John H. Besson? A. Right.

Q. Where do you live, Doctor? A. Where do I live?

Q. Yes, in Portland? A. Portland, yes.

Q. What is your occupation or profession? A. Physician and surgeon.

Q. You have followed that profession how long? A. Since 1909.

Q. Have you practiced all that time in Oregon? A. Except during my internship and residency. I had a resi-

dency and internship in Metropolitan Hospital in New York City.

Q. At what medical school did you get your medical education? A. Graduated from Hahnemann in Philadelphia.

Q. Are you a member of any medical society? A. I am a member of the Multnomah County Medical Society and the Oregon State Medical Society, the American Medical Association and the American College of Surgeons.

2110 Q. How long have you been a member of these medical societies? A. Since about 1911, I think something like that, of the Multnomah Society, and the American Medical Association and the Oregon State Medical Society, and the College of Surgeons I think since about 1931.

Q. Have you ever been an officer of any of those medical societies? A. No, I have not, excepting a member of the Council.

Q. The Council of what society? A. The Oregon State Medical Society and the Multnomah County Medical society.

Q. Do you remember when you were a member of the Council? A. I think the Council of the Multnomah County Medical Society in about 1938 or '39; 1938, probably. I don't remember whether it was for one or two terms, and the Oregon State Medical Society from about 1941 to 1943 or 1944; I think one term of three years; I think two terms in the Multnomah County Medical Society and one in the State Society.

Q. Are you on the staff of any hospital? A. Yes, I am on the staff now of the Holladay Park Hospital.

Q. Are you chief of that staff? A. I am chief of the surgical staff.

Q. How long have you been chief of the surgical staff?

The Court: Does he have a specialty?

Mr. Jaureguy:

2111 Q. Oh, yes. Do you have a specialty? A. I am specializing in general surgery.

Q. You are one of the defendants in this case? A. I understand so. I was notified so.

Q. Have you ever had occasion—

The Court: You got a ticket, in other words.

Mr. Jaureguy:

Q. Have you ever had occasion to treat patients who were members of commercial hospital associations? A. Yes; I have.

Q. Have you ever been on the panel of any commercial hospital associations? A. Yes. I was on the panel of the Industrial Hospital Association.

Q. Just explain to us how you happened to get on that panel and the events preceding it?

Mr. Marcus: Your Honor, I do want to object again to this line of testimony on the same grounds as with respect to Dr. Durno.

The Court: Dr. Durno has become quite famous.

Mr. Marcus: Yes.

The Court: You have made that objection each time. That was quite a day when we had him here. You are taking it easier this week than you did last week. Well, that is good.

The ruling will be the same and the testimony will be admitted subject to the objection.

Mr. Jaureguy:

Q. Tell us the events leading up to that. A. Per-
2112 haps I will have to go back a little ways. I practiced here from 1911 until about 1918. I was taken ill with tuberculosis shortly after that and I went to Bend and practiced there for eight years.

Q. On account of your health? A. Yes, I thought so; and I took it somewhat easier there. I then went to the University of Vienna for a year and came back here. My brother, who was practicing on the East Side, by reason of his proximity to the Iron Fireman operation over there, became recognized as the physician for that industry.

The Court: Was your brother a baseball pitcher?

A. Indeed he was.

The Court: He was a good one. Is he still living?

A. No, he died within the year, about a year ago.

The Court: Sorry.

Mr. Jaureguy:

Q. Was he taking care of these employes at the Iron Fireman as private patients or for some organization? A.

Not for any organization. Some of those came to him as a sort of a neighborhood physician and some were sent who had no choice of physician, and he gradually accumulated quite a practice there, and when I came back to Portland, after my time in Vienna, and associated with my brother, we had a considerable number of those Iron Fireman patients or employes, rather, and along about 1934 or 1935 the Industrial Hospital Association solicited the Iron Fireman plant, and we were informed that they would
2113 likely get a contract.

Q. Did they consult you before they solicited the plant? A. No, not at all, and it got the point where it looked as if they were going to write a contract with the Iron Fireman Company, and then one of their solicitors came to our office and had an encounter or argument with Dr. Besson. Dr. Besson had been looking after so many of their men and a good many of their men wanted to continue with Dr. Besson, and they did not like the idea that he would be eliminated by a contract with Industrial, so they propositioned us that we might go on their panel, and sort of handed us that sop, that they were going to take the business anyhow, that they had quite a group of specialists and others that they could offer the workmen, and a great many of the workmen and the plant were impressed that they would get better service if they had the Industrial group than if they had the three men representing our office.

The Court: It is 4:00 o'clock. We will adjourn until tomorrow.

(Thereupon, at 4:00 o'clock P. M., an adjournment was taken until 10:00 o'clock A. M., February 2, 1950.)

2114 Court reconvened at 10:00 o'clock A. M., Thursday, February 2, 1950, pursuant to adjournment.

DR. JOHN H. BESSON, one of the Defendants herein, having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination (Continued)

By Mr. Jaureguy:

Q. When we adjourned yesterday, Doctor, you were telling that the Industrial Hospital Association had gone

out to the Iron Fireman and taken a contract covering a lot of patients of your brother and yourself, and, as they talked to you, they were going to put you on the panel. That is where we adjourned.

Would you go on from there? A. We serviced some patients of Industrial Hospital Association.

Q. They did put you on the panel? A. Yes, they did put me on the panel, on the contract, and we served some of these patients.

Q. How long did that go on for you? A. Oh, I imagine probably three or four years. I don't know just what year the contract was drawn happened to be but possibly three years or something like that, and the Board of Censors of the Multnomah County Medical Society called me for a meeting one evening.

2115 Q. That is the Board of Censors of the Multnomah County Medical Society? A. That is right.

Q. Did you feel you were being called in as a result of the work of a conspiracy that you were a member of then? A. Well, I wasn't cognizant of any conspiracy, if there has ever been any, certainly, at that time.

Q. What took place before the Board of Censors then? A. They pointed out to me that being associated with a commercial hospital association is not in the nature of ethical practice.

Q. You being on a limited panel of that nature? A. That is right.

Q. Did you discuss those features of it? A. Yes, we probably had a conference lasting an hour or something like that, I think the three members of the Board of Censors and myself, and I felt and agreed with the Board of Censors that my allegiance to the Medical Society and its ethics was more important to me than continuing with this hospital association, and I volunteered to sever my connection with it, which I did.

Q. Was there any discussion at that meeting about any other organization selling prepaid medical care? A. Yes.

Q. Just a minute. What was that discussion? A.

2116 I asked the Board whether it would be all right for me to join the Multnomah Industrial Health Association, and some one of the members of the Board told me that the Society did not recognize Multnomah as an ethical practice.

Q. Had you known then that the approval of the Society had been withdrawn from that organization? A. I don't know that I did. I didn't pay too much attention to that

sort of thing. I had held no offices or had no very close association with the Medical Society, other than being a member. I asked this question, wondering if it would be—wondering if I would be in a different position if I made application for the Multnomah Service Bureau, and was told that it was not considered ethical and that the Society did not approve of it. Some three or four months later I put in an application to Multnomah and joined it.

Q. You were a member of that organization for how long? Did you continue up to the time that its business was taken over by OPS? A. Yes, I did. I joined it and I think probably in one of the first annual meetings I was elected a director of it and served on the Board of Directors continually for a year or two, being elected Vice-President and, the next year, President of the Multnomah Medical Service Bureau,—in fact, being the last President serving up to the time it was turned over to OPS.

Q. First you were on the Board of Directors, and
2117 then Vice-President and them President? A. Yes.

Q. That would put it about— A. It was probably several months or a year or something like that after I joined Multnomah. As I recall, it was the first annual meeting of the stockholders of Multnomah that I was elected—the first annual meeting that I attended after joining I was elected to the Board of Directors.

Q. Did you have anything to do with the organization of OPS? A. No, not a great deal. I was on one of these committees, as I recall, but at that time I was a member of the Council of the Medical Society.

Q. That is, the County or the State Society? A. Probably just the County. I think I was on the—I think I was on the State Medical Society from about 1941 to 1944 or something like that, a three-year term, and I think I may have been on the State Medical Society in this conversion period, too.

Q. You mean by "conversion" the Multnomah Medical Service Bureau going out of business and OPS taking the contracts? A. That is right.

Q. Then you say you were on the Council of the State Society from then for a three-year term? A. That is right.

Q. Did you ever hold any office with the OPS?
2118 Q. You were not a trustee or director of OPS?

A. No. I had no office whatsoever with OPS.

Q. After you got off the panel of the Industrial Hospital Association, did your brother go off the panel, too? A.